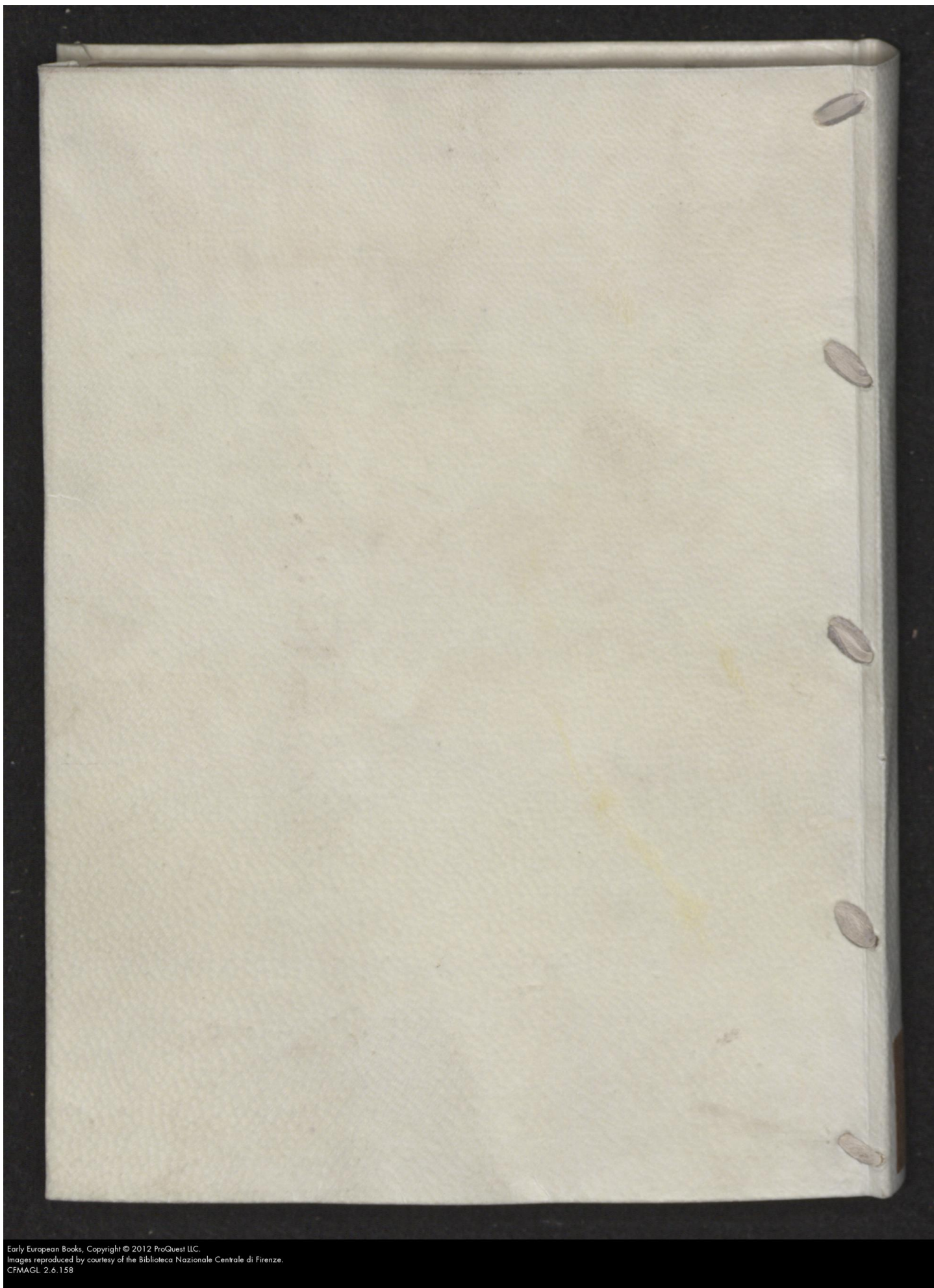


Early European Books, Copyright © 2012 ProQuest LLC.
Images reproduced by courtesy of the Biblioteca Nazionale Centrale di Firenze.
CFMAGL 2.6.158

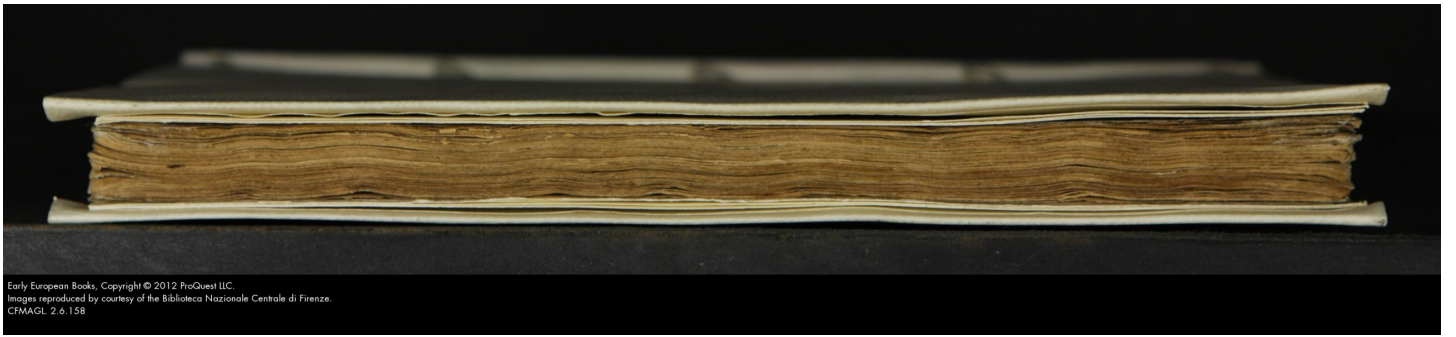




Early European Books, Copyright © 2012 ProQuest LLC.
Images reproduced by courtesy of the Biblioteca Nazionale Centrale di Firenze.
CFMAGL 2.6.158



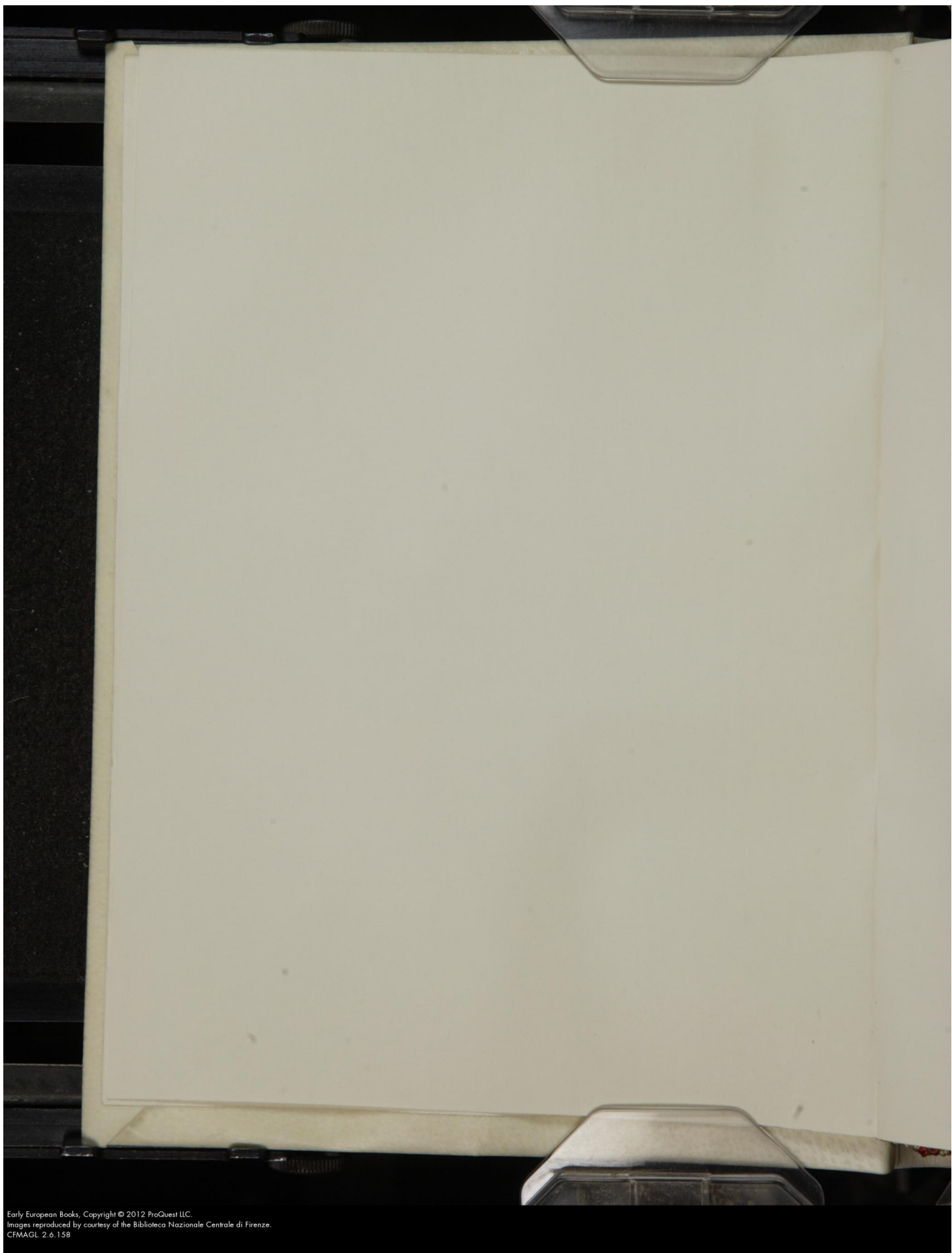
Early European Books, Copyright © 2012 ProQuest LLC.
Images reproduced by courtesy of the Biblioteca Nazionale Centrale di Firenze.
CFMAGL 2.6.158



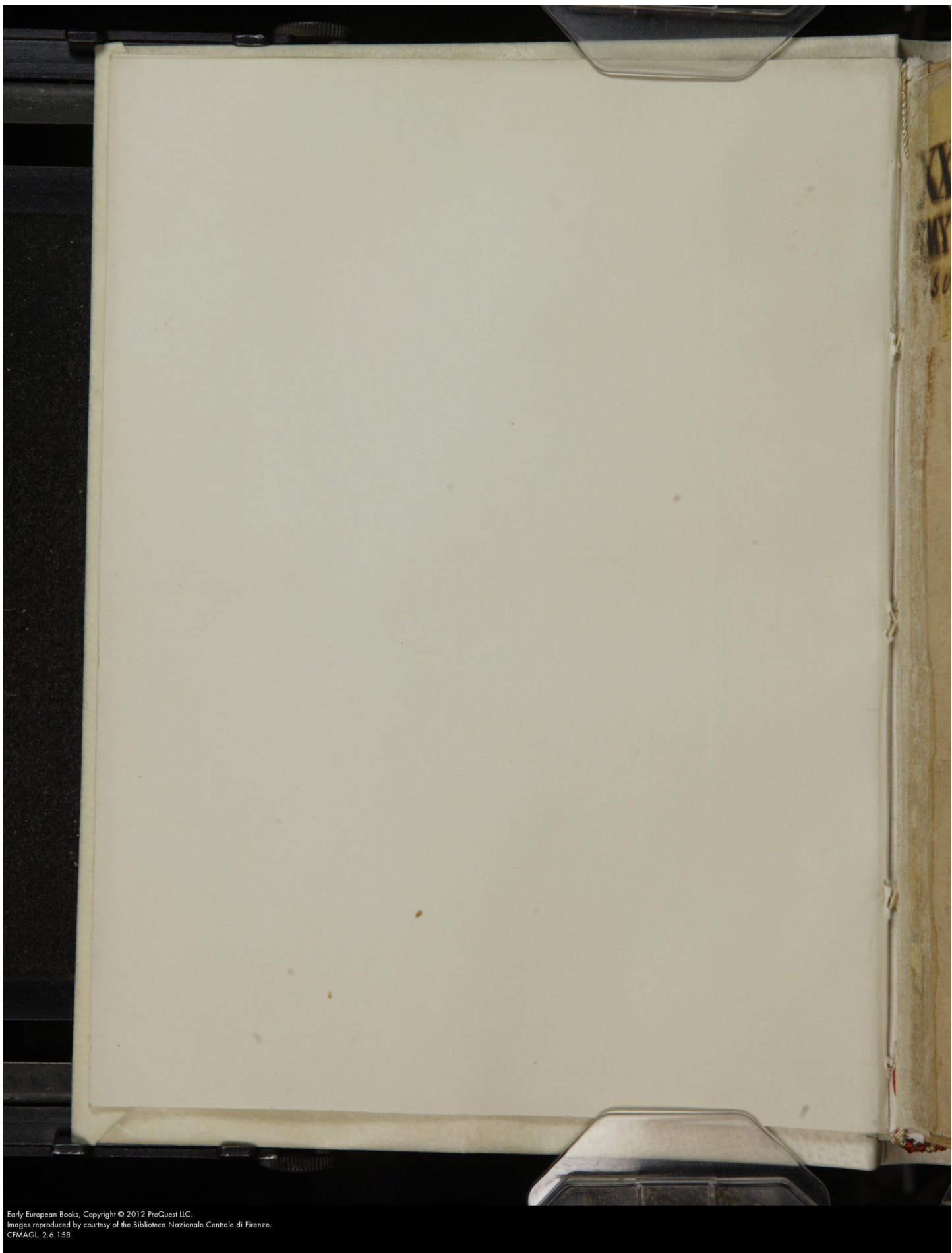
Early European Books, Copyright © 2012 ProQuest LLC.
Images reproduced by courtesy of the Biblioteca Nazionale Centrale di Firenze.
CFMAGL 2.6.158











XXX
SMYTH
5074

XXX

SMYTH

1414

Francisci

FRANCISCI
CAESARIS AVGVSTI
MVNIFICENTIA.

2. 6. 158

2 H. 6

B1

DE
REPVBLICA
ANGLORVM.

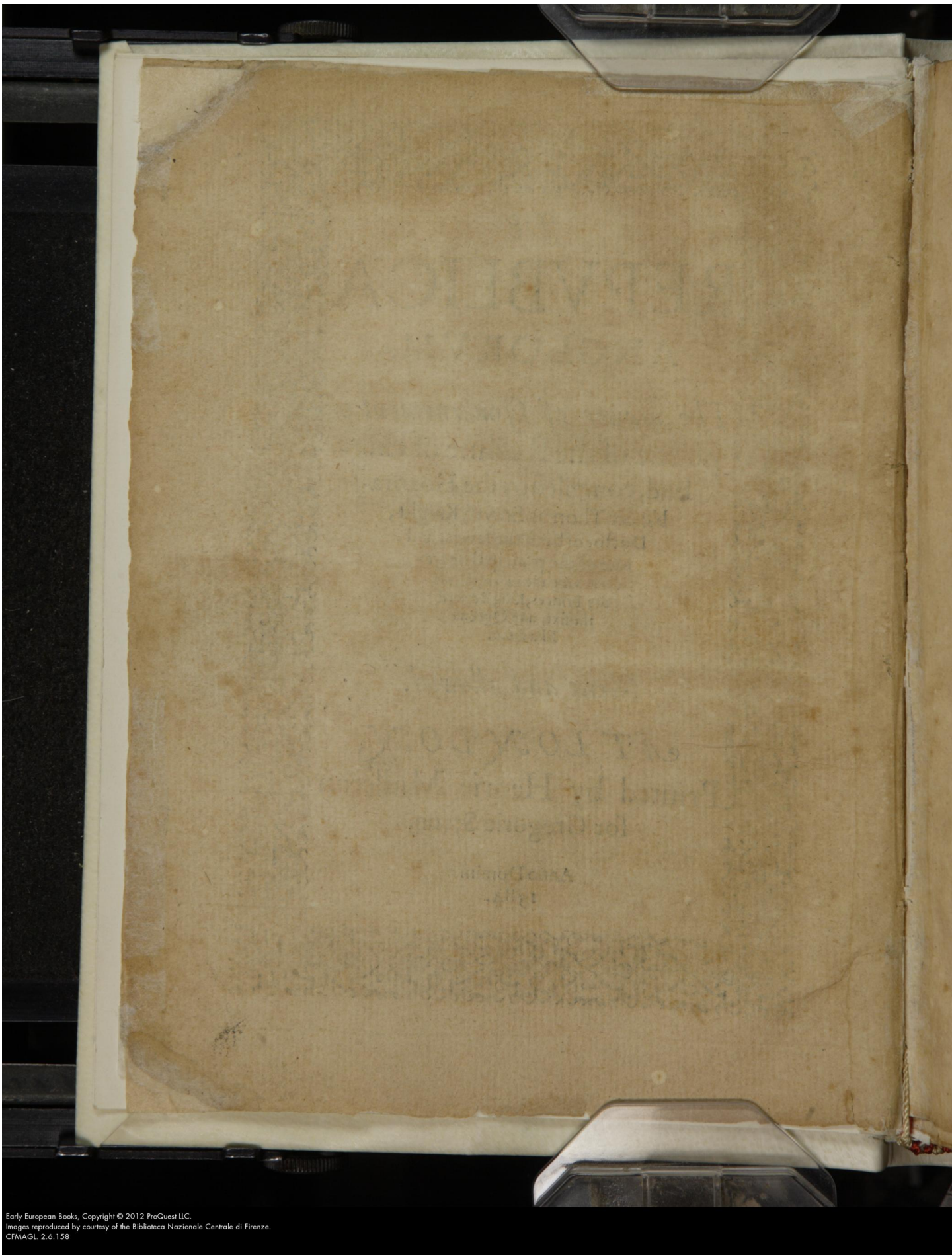
*The maner of Gouvernement or
policie of the Realme of Eng-
land, compiled by the Honora-
ble Sir Thomas Smyth Knight,
Doctor of both the lawes, and
one of the principal Secre-
taries vnto the two most wor-
thy Princes, King Edward
the sixt, and Queene
Elizabeth.*

Seene and allowed.

AT LONDON,
Printed by Henrie Middleton
for Gregorie Seton,

Anno Domini
1584.





To the Reader.



O conceale the graces
inspired by God, or the
giftes ingrafted by na-
ture, or the vertues at-
chiued vnto ourselues
by industrie, in all ages
and of all wise men was
accounted vnduetiful-
nesse, vnkindnesse & impietie vnto that com-
mon wealth, in the which, and vnto the which
we are both bred and borne : but to suppressse
the worthie works of any author, may iustly be
iudged not only iniurie to the person, but euen
enuie at the whole world. VWherefore chaun-
cing vpon this short discourse compiled by the
honorable knight sir Thomas Smyth, and con-
sidering that the same could not but be a great
light vnto the ignorant, & no lesse delight vn-
to the learned in the lawes and policie of sun-
drie regiments : I thought it part of my dutie,
aswel for reuiuing of the fame of so notable a
man, as for the publike imparting of so pythie
a treatise, to present the same vnto thy indiffe-
rent and discreete iudgement . VWherein al-
though the errors & rashnes of Scribes, appea-
ring in the contrarietie & corruption of cop-
pies

To the Reader.

pies, happening both by the length of time strengthens the first making, as also by the often transcribing might iustly haue been mine excuse or rather discourage: yet weying the authoritie of the author together with the grauitie of the matter, I made no doubt but that the reuerence due vnto the one, & the recompence deserued by the other would easily counteruail all faults committed by a clarke & writer. And whereas some termes or other matters may seme to dissent from the vsual phrase of the cōmon lawes of this realme: notwithstanding to him that will consider that the profession of the maker was principally in the ciuil lawes, and therefore not to be expected as one excellent in both, & also that the finishing of this worke was in Fraunce farre from his librarie, and in an ambassad euen in the midst of waightie affaires, it cannot nor ought not without great ingratitude be displeasing or in any sort disliking. VVherefore (gentle Reader) accept in good part my zeale and this honorable mans trauaile: assuring thy self that the same framed by an expert workemaister, and forged of pure and excellent mettall, will not faile in proouing to be a right commodious instrument.

Vale

A NECESSARIE

Table of all the principall matters contained in this Booke.



F the diuerſities of common wealthes or gouernements. Chapter 1. Pagina 1.	
What is iuſt or Lawe in euerie common wealth or gouernement. cap. 2. pag. 2.	
An other diuiſion of common wealthes,	pag. 3.
chap. 3.	
Example of chaunges in the manner of gouernement.	pag. 3.
chap. 4.	
Of the queſtion what is right and iuſt in euerie com- mon wealth. chap. 5.	pag. 4.
That common wealths or gouernements are not (moſt commonly) ſimple but mixt. chap. 6.	pag. 5.
The definition of a King and of a Tyrant. chap. 7.	pag. 6.
Of the abſolute king. chap. 8.	pag. 7.
Of the name king and the adminiſtration of Eng- land. chap. 9.	pag. 9.
What is a common wealth, and the partes thereof.	pag. 10.
chap. 10.	
The firſt ſort or beginning of an houſe or familie called <i>οικογενεια</i> . chap. 11.	pag. 12.
The firſt & naturall beginning of a kingdome, in Greeke <i>βασιλεια</i> . chap. 12.	pag. 13.
The firſt and naturall beginning of the rule of a fewe of the beſt men called in Greeke, <i>αριστοκρατια</i> . ca. 13. pa. 14.	
The firſt originall or beginning of the rule of the multi- tude called <i>Πολιτεια</i> or <i>δημοκρατια</i> . chap. 14.	pag. 16.
That the common wealth or policie muſt be according to the nature of the people. chap. 14.	pag. 17.
The diuiſion of partes and perſons of the common wealths. chap. 16.	pag. 18.

The Table.

The first part of Gentlemen of England called <i>Nobilitas maior</i> . chap. 17.	pag. 20.
Of the second sort of Gentlemen of England called <i>Nobilitas minor</i> , and first of knights. chap. 18.	pag. 21.
Of Esquiers. chap. 19.	pag. 25.
Of Gentlemen. chap. 20.	pag. 26.
Whether the maner of Englande in making Gentlemen so easilie is to be allowed. chap. 21.	pag. 28.
Of Citizens and Burgeses. chap. 22.	pag. 29.
Of Yeomen. chap. 23.	pag. eadem.
Of the fourth sort of men which do not rule. ca. 24.	p. 33.

The second booke.

Of the Parliament and authoritie therof. ca. 1.	pa. 34.
The forme of holding the parliament. ca. 2.	pa. 35.
Of the Monarch, King or Queene of England. ca. 3.	p. 43.
The chiefe points wherein one common wealth doeth differ from an other. chap. 4.	pag. 47.
Of the three maners and formes of trials or iudgements in England. chap. 5.	pag. 48.
Triall or iudgement by Parliament. chap. 6.	pag. ead.
Triall of iudgement by battle. chap. 7.	pag. 49.
The triall by Assise or xij. men, & first of the three parts which be necessarie in iudgement. chap. 8.	pag. ead.
Of Pleas or Actions. chap. 9.	pag. 50.
Of the chiefe Tribunals, Benches or Courtes of England. chap. 10.	pag. 51.
Of the times of pleading called Termes, and of the Chauncellor and Chauncerie. chap. 11.	pag. 52.
Of Iudges in the common lawe of Englande, and the maner of triall and pleading there. chap. 12.	pag. 55.
Of the two maner of issues. chap. 13.	pag. 56.
Of the Sheriffe of the shire and of the Court of the Eschequer. chap. 14.	pag. 58.
Of the xij. men. chap. 15.	pag. 61.
Of	

The Table.

Of parts of Shires called hundreds, lathes, rapes, wapentakes. chap. 16.	pag. 63.
Of the Court Baron. chap. 17.	pag. 64.
Of the Leete or Laweday. chap. 18.	pag. 66.
Of the proceedings in causes criminall, and first of the Iustices of the peace. chap. 19.	pag. 67.
Of hue and crie and recognisaunce taking vpon them that may giue euidence. chap. 20.	pag. 71.
Of the Coroner. chap. 21.	pag. 72.
Of the Constables. chap. 22.	pag. 74.
Of the sessions of gaole deliuerie, & the definitiue proceedings in causes criminall. chap. 23.	pag. 75.
Certaine orders peculiar to England, touching punishment of malefactors. chap. 24.	pag. 84.
Of treason and the triall which is vsed for the higher Nobilitie and Barons. chap. 25.	pag. 86.

The third booke.

OF that which in other countries is called <i>appellation</i> or <i>pronocation</i> , to amend the iudgement or sentence definitiue, which is thought vniustly giuen in causes criminall. chap. 1.	pag. 87.
What remedie is if the sentence be thought vniustly giuen. chap. 2.	pag. 89.
Of that which in Englande is called appeale, in other places accusation. chap. 3.	pag. 92.
Of the Court of Starre chamber. chap. 4.	pag. 94.
Of the Courts of Wards and Liueries. chap. 5.	pag. 97.
Of Wiues and mariages. chap. 6.	pag. 101.
Of Children. chap. 7.	pag. 106.
Of Bondage and bondmen. chap. 8.	pag. 107.
Of the court which is Spiritual or Ecclesiasticall, and (in the booke of Lawe) Court Christian, or <i>Curia Christianitatis</i> , chap. 9.	pag. 116.

FINIS.

DE
REPVBLICA
ANGLORVM.

The maner of gouvernement or
policie of the REALME of
ENGLANDE.

Of the diuersities of common
wealthes or gouvernement.

CHAP. I.



They that haue writtens
heretofore of Common
wealthes, haue brought
them into thre most sim-
ple and special kindes or
fashions of gouernment.
The first wher one alone
doth gouerne, is called of
the Greeks *Μοναρχια*, the se- *Monarchia*
cond, where the smaller
number, commonly called
of them *Αριστοκρατια*, and the thirde where the multitude *Αριστοκρατια*.
doth rule *Δημοκρατια*. To rule, is vnderstode to haue the *Democratia*.
highest and supreme authoritie of commaundement.
That part or member of the comon wealth is saide to
rule which doth controwle, correct, and direct all other
members of the commonwealth. That part which doth
rule, define and command according to the forme of the
gouernement, is taken in euerie common wealth to be
iust and lawe: As a rule is alway to be vnderstode to
be straight, and to which all woorkes be to be confor-
med,

¶

med, and by it to be iudged: I do not meane the Lesbians rule which is conformed to the Stone: but the right rule whereby the Artificer and the Architect doe iudge the straightnesse of euerie mans worke, he to be reckoned to make his worke perfectest, who goeth nearest to the straightnesse.

What is iust or Lawe in euerie common wealth or gouernement.

CHAP. 2.

NOwe it doth appeare, that it is profitable to euerie common wealth (as it is to euery thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, doe commaund that which is profitable to it, and the commandement of that part which doth rule on that sort, is to be accepted in euery common wealth respectiuely to be iust (as we haue said befoze): it must needes follow, that the definition which Thrasimachus did make, that to be iust which is the profit of the ruling and most strong part (if it be meant of the Citie or common wealth) is not so farre out of the way, (if it be ciuillie vnderstood) as Plato would make it. But as there is profitable and likelihoode of profite, so there is right and likelihoode of right. And aswell may the ruling and Soveraigne part commaunde that which is not his profite, as the iust man may offend (notwithstanding his iust and true meaning) when he would amend that which is amisse, and helpe the common wealth, and doe good vnto it. For in asmuch as he attempteth to doe contrarie to the Lawe which is alreadie put, he therefore by the lawe is iustly to be condemned, because his doing is contrarie to the lawe and the ordinance of that part which doth commaunde.

Iust.

An.

An other diuision of common wealthes.

CHAP. 3.

But this matter yet taketh an other doubt: for of these maner of rulinges by one, by the fewer part, & by the multitude or greater number, they which haue more methodically & more distinctly & perfectly written vpon them, doe make a subdiuision: and diuiding ech into two, make the one good and iust, and the other euil and vniust: as, where one ruleth, the one they call a king or *Basileus*, the other *tyrannos*, a tyrant: where the fewer number, the one they name a gouerning of the best men *aristocratiā*, or *Rempublicam optimatū*, the other of the vsurping of a few Gentlemen, or a few of the richer & stronger, sort *oligarchiā*, or *Paucorum potestatem*: and where the multitude doth gouerne, the one they call a common wealth by the generall name *politeiā*, or the rule of the people *δημοκρατιā*, the other the rule or the vsurping of the popular or rascall and viler sort, because they be mo in number *δημοκρατιā* & *ἀναρχίαν*.

Example of chaunges in the maner of Gouernement.

CHAP. 4.

In a common wealthes which haue had long continuance, the diuersities of times haue made all these maners of ruling or gouernment to be seene: As in Rome: kinges, Romulus, Numa, Seruius, tyrantes, Tarquinius, Sylla, Caesar: the rule of best men, as in time when the first Consuls were: and the vsurping of a few, as of the Senators: after the death of Tarquinius, and before the Incession of the Tribunate, and manifestly in the Decemvirate, but more perniciously in the Triumvirate of Caesar, Crassus, and Pompeius: and afterwarde in the Triumvirate of Octavius, Antonius, and Lepidus: The common wealth and rule of the people, as in the expul-

king of the decemviri and long after, especially after the law was made, either by Horatius, or (as some would haue it) Hortentius, *quod plebs scierit, id populum teneat*: And the ruling and vsurping of the popular and rascal, as a litle befoze Sylla his reigne, & a litle befoze Caius Cēsars reigne. For this vsurping of the rascality cā neuer long indure, but necessarily breedeth, & quickly byingeth forth a tyzant. Of this, hath Athens, Syracuse, Lacedemon and other olde auncient ruling Cities had experience, and a man neede not doubt but that other cōmon wealthes haue followed the same rate. For the nature of man is neuer to stand stil in one maner of estate, but to grow from the lesse to the moze, and decay from the moze againe to the lesse, till it come to the fatal end and destruction, with many turnes and turmoyles of sicknesse & reconering, sel dome standing in a perfect health, neither of a mans bodie it selfe, nor of the politike bodie which is compact of the same.

Of the question what is right and iust in
euerie common wealth.

CHAP. 5.

SO when the common wealth is euill gouerned by an euill ruler and vniust (as in the thre last named which be rather a sickenes of this politike body than perfect and good estates) if the lawes be made, as most like they be alwaies to maintaine that estate: the question remaineth to whether the obedience of them be iust, and the disobedience wzong: the profit and conseruation of that estate right & iustice, or the dissolution: and whether a good and vpight man, and louer of his countrie ought to maintaine and obey them, or to seeke by all meanes to abolish the, which great & hantie courages haue often attempted: as Dion to rise vp against Dionysius, Thrasibulus against the xxx. tyzants, Brutus and Cassius

Cassius against Cæsar, which hath bin cause of many commotions in common wealthes, whereof the iudgement of the common people is according to the event and successe: of them which be learned, according to the purpose of the doers, & the estate of the time then present. Certaine it is that it is alwayes a doubtfull and basardous matter to meddle with the chaunging of the lawes and gouvernement, or to disobey the orders of the rule or government, which a man doth finde already established.

That common wealthes or governments
are not most commonly simple but mixt.

CHAP. 6.

NOW although the governments of common wealthes be thus divided into three, and cutting ech into two, so into sixe: yet you must not take that ye shall finde any common wealth or government simple, pure and absolute in his sort & kinde, but as wise men have divided for vnderstandings sake and fantasied it in simple bodies which they call elementes, as fire, ayre, water, earth, and in a mans bodie foure complexions or temperatures, as cholericke, sanguine, phlegmatique, and melancolique: not that ye shall finde the one utterly perfect without mixture of the other, for that nature almost will not suffer, but vnderstanding both discern ech nature as in his sinceritie: so seldome or neuer shall you finde common wealthes or government which is absolutely and sincerely made of any of them abouenamed, but alwayes mixed with an other, and hath the name of that which is moze and ouerruleth the other alwayes or for the most part.

B 3

The

The definition of a king and of a tyrant.

CHAP. 7.

Rex.

Tyrannus.

Where one person beareth the rule they define that to be the estate of a king, who by succession or election commeth with the good will of the people to that government, and doth administer the common wealth by the lawes of the same and by equitie, and doth seeke the profit of the people as much as his owne. A tyrant they name him, who by force commeth to the monarchy against the will of the people, breaketh lawes already made at his pleasure, maketh other without the aduise and consent of the people, and regardeth not the wealth of his communes but the aduancement of himselfe, his faction, & kindred. These definitions do containe three differences: the obtaining of the authoritie, the maner of administration thereof, & the butte or marke whereunto it doth tend and shote. So as one may be a tyrant by his entrie and getting of the government, & a king in the administration thereof. As a man may thinke of Octavius and peradventure of Sylla. For they both coming by tyranny and violence to that state, did seeme to trauaile verie much for the better order of the common wealth, howbeit either of them after a diuerse maner. An other may be a king by entrie, & a tyrant by administration, as Nero, Domitian, and Commodus: for the empire came to them by succession, but their administration was vtterly tyrannicall, of Nero after five yeares, of Domitian and Commodus very shortly vpon their new honour. Some both in the coming to their Empire, and in the butte which they shote at, be kings, but the maner of their ruling is tyrannicall: as many Emperors after Caesar and Octavius, and many Popes of Rome. The Emperours claime this tyrannicall power by pretence of that Rogation or *plebiscitum*, which Caius Caesar or Octavius obtained, by which al the people

ple of Rome did conferre their power and authoritie vnto Caesar wholly.

The Pope groundeth his from Chzist (*cui omnis potestas data est in cælo & in terra*) whose successor he pretendeth to be: yet the general Councils make a strife with him, to make the Popes power either *Aristocratican* or at the least *legitimum regnum*, & would faine bide that *absolutam potestatem*. Some men doe iudge the same of the kings of Fraunce, and certaine Princes of Italie and other places, because they make & abrogate lawes and edicts, lay on tributes & impositions of their owne will, or by the priuate Counsell and aduise of their friends and fauorites onely, without the consent of the people. The people I call that which the word *populus* doth signifie, the whole body and the thre estates of the common wealth: and they blame Lewes the xi. for bzing the administration royall of Fraunce, from the lawfull and regulate raigne, to the absolute and tyrannicall power and gouernement. He himselfe was wont to gloze & say, he had brought the crowne of Fraunce hors de page, as one would say out of Wardship.

Of the absolute King.

CHAP. 8.

Other doe call that kinde of administration which the Greekes do call, *αυτοκρατορια*, not tyrannie, but the absolute power of a King, which they would pretende that euerie King hath, if he would vse the same. The other they call *βασιλειαν δημοκρατικην* or the Royall power regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace, the same is verie dangerous, as well to him that doth vse it, and much moze to the people vpon whom

Dictatorship.

Whom it is vsed : whereof the cause is the frailtie of mans nature, which (as Plato saith) cannot abide or beare long that absolute and vncontrolled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who would not suffer any man to keepe the Dictatorship aboue six monethes, because the Dictators (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, Aristotle, (who of all writers hath most absolutely & methodically treated of the diuision and natures of common wealthes) maketh this sort of gouernment to be one kind of kings. But all cometh to one effect : for at the first, all kings ruled absolutely, as they who were either the heades & most ancient of their families, deriued out of their own bodies, as Adam, Noa, Abraham, Iacob, Esau, reigning absolutely ouer their owne children and bondmen as reason was : or else in the rude world amongst barbarous & ignorant people, some one then whom God had endewed with singular wisdom to inuent things necessary for the nourishing and defence of the multitude, and to administer iustice did so farre excell other, that all the rest were but beastes in comparison of him, and for that excellencie willingly had this authoritie giuen him of the multitude, and of the Gentils when he was dead & almost when he was yet liuing, was taken for a God, of others for a Prophet. Such among the Iewes were Moses, Iosua, & the other Judges, as Samuel, &c. Romulus & Numa amongst the Romanes, Lycurgus and Solon & diuerse other among the Greekes, Zamolxis among the Thracians, Mahomet among the Arabians : And this kinde of rule among the Greekes is called *tyrannis*, which of it selfe at the first was not a name odious : But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent & proude, vniustand not regarding the common wealth, committed

Tyrannis.

committed such actes as were horrible and odious, as killing me without cause, abusing their wiues & daughters, taking and spoyling all mens goods at their pleasures, and were not shepherdes as they ought to be, but rather robbers & deuourers of the people, whereof some were contēners of God, as Dionysius, other while they liued like diuils, and would yet be adoꝛed & accompted foꝛ Gods, as Caius Caligula and Domitian: that kind of administration and maner also, at the first not euil, hath taken the signification & definition of the vice of the abusers, so that now both in Greeke, Latine, and English a tyrant is counted he, who is an euill king, & who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe and his, and to satisfie his vicious and cruell appetite, without respect of God, of right oꝛ of the law: because that foꝛ y most part they who haue had that absolute power haue bene such.

Of the name king and thadministration
of Englande.

CHAP. 9.

That which we call in one syllable king, in english y olde english men and the Saxons from whom our tongue is deriued to this day calleth in two syllables cyning, which whether it cometh of cen oꝛ ken which betokeneth to know & vnderstand, oꝛ can, which betokeneth to be able oꝛ to haue power, I cannot tell. The participle absolute of thone we vse yet, as when we say a cūning man, *Vir prudens aut sciens*: the verbe of thother as I can do this, *possum hoc facere*. By old and auncient histories that I haue red, I do not vnderstand that our nation hath vsed any other generall authoritie in this realme neither Aristocraticall, noꝛ Democraticall, but onely the royall and kingly maiestie which at the first was diuided into many and sundrie kinges, each abso-

C

lutely

lutely reigning in his countrie, not vnder the subiectiō of other, till by fighting thone with thother, the ouercommied alwaies falling to the augmentation of the vanquisher and ouercommer, at the last the realme of england grew into one Monarchie. Neither any one of those kinges, neither he who first had all, tooke any inuestiture at the hand of themperoꝝ of Rome oꝝ of any other superiour oꝝ soꝛaine pꝛince, but helde of God to himselfe, and by his swoꝛde his people and crowne, acknowledging no pꝛince in earth his superiour, and so it is kept & holden at this day. Although king Iohn (by the rebellion of the nobilitie aided with the daulphin of Fraunce his power) to appease the Pope who at that time possessing the consciences of his subiectes was the also his enemy and his most grēuous toꝛmēt (as some histories do wꝛite) did resigne the crowne to his legate Pandulphus, and tooke it againe from him as from the Pope by faith and homage, and a certain tribute yearly. But that act being neither appꝛoued by his people, noꝛ established by act of parliament, was soꝛthwith and euer sithens taken foꝛ nothing, either to bind the king, his successoꝝ oꝛ subiectes.

What is a common wealth, and the
partes thereof.

CHAP. 10.

Respublica.

To be better vnderstood hereafter, it is necessarie yet to make a third diuision of the common wealth by the partes thereof. A common wealth is called a societie oꝛ common doing of a multitude of frē men collected together and vnited by common accoꝛd & couenauntes among themselues, foꝛ the conseruation of themselues aswell in peace as in war. Foꝛ properly an host of men is not called a common wealth but abusiuely, because they are collected but foꝛ a time and foꝛ a fact: which
done,

done, ech diuideth himself from others as they were be-
foze. And if one man had, as some of the old Romanes
had (if it be true that is witten) v. thousande or x.
thousande bondmen whom he ruled well, though they
dwelled all in one citie, or were distributed into diuerse
villages, yet that were no comon wealth: for the bond-
man hath no communion with his master, the wealth
of the Lord is only sought for, and not the profit of the
suaue or bondman. For as they who write of these
thinges haue defined, a bondman or a slaue is as it
were (sauiug life & humane reason) but the instrument
of his Lord, as the axe, the sawe, the chesell and goolge
is of the charpenter. Wrth it is the charpenter looketh
diligently to saue, correct and amend all these: but it is
for his own profit, and in consideration of himselfe, not
for the instruments sake. And as these be instruments
of the charpenter, so the plow, the cart, the horse, ore or
asse, be instrumentes of the husbandman: and though
one husbandman had a great number of all those and
looked well to them, it made no common wealth nor
could not so be called. For the priuate wealth of the hus-
bandman is onely regarded, and there is no mutuall
societie or portion, no law or pleading betwene thone
and thother. And (as he sayth) what reason hath the
pot to say to the potter, why madest thou me thus? or
why dost thou break me after thou hast made me: euen
so is the bondman or slaue which is bought for monie:
for he is but a reasonable and lyuing instrument the
possession of his Lords and maister, reckoned among
his goods, not otherwise admitted to the societie ciuill
or common wealth, but is part of the possession and
goods of his Lord. Wherefore except there be other
orders and administrations amongst the Turkes, if the
prince of the Turkes (as it is witten of him) doe re-
pute al other his bondmen and slaues (himselfe and his
sonnes onely freemen) a man may doubt whether his
admini-

administration be to be accounted a common wealth
or a kingdome, or rather to be reputed only as one that
hath vnder him an infinite number of slaves or bondme
among whom there is no right, law nor common wealth
compact, but onely the will of the Lord and signior.
Surely none of the olde Grækes would call this fa-
shion of gouernment Remp. or *πολιτεία* for the reasons
which I haue declared before.

The first sort or beginning of an house
or familie called *οἰκονομία*.

CHAP. II.

Then if this be a societie, and consisteth onely of free
men, the least part therof must be of two. The natu-
rales and first coniunction of two toward the making
of a further societie of continuance is of the husband &
of the wife after a diuerse sort each hauing care of the
familie: the man to get, to trauaile abroad, to defend:
the wife, to saue y^e which is gotten, to tarrie at home
to distribute that which commeth of the husbandes la-
bor for the nutriture of the childre and family of them
both, and to keepe all at home neat and cleane. So na-
ture hath forged ech part to his office, the man sterne,
strong, bould, aduenterous, negligent of his beautie, &
spending. The women weake, fearefull, faire, curious
of her belovte, and saving. Either of them excelling o-
ther in wit and wisdom to conduct those thinges
which appertaine to their office, and therefore where
their wisdom doth excel, therein it is reason that ech
should gouerne. And without this societie of man, and
woman, the kinde of man could not long endure. And
to this societie men are so naturally bozne that the
prince of all Philosophers in consideration of natures
was not afraide to say that a man by nature is rather
desirous to fellow himselfe to another and so to liue in
couple,

couple, than to adherd himselfe with many. Although of all thinges or liuing creatures a man doth shew himselfe most politike, yet can he not well liue without the societie & fellowship ciuil. He that can liue alone saith Aristotle is either a wild beast in a mans likeness, or else a god rather than a man. So in the house and familie is the first and most naturall (but priuate) apparance of one of the best kindes of a common wealth, that is called Aristocratia where a few & the best doe gouerne, and where not one alwaies: but sometime and in some thing one, & sometime and in some thing another doth beare the rule. Which to maintaine for his part God hath giuen to the man great wit, bigger strength, and more courage to compell the woman to obey by reason or force, and to the woman beutie, faire countenance, and swete words to make the man to obey her againe for loue. Thus ech obeyeth and commaundeth other, and they two together rule the house. The house I call here the man, the woman, their childzen, their seruantes bonde and free, their cattell, their houtholde stuffe, and all other things, which are reckoned in their possession, so long as all these remaine together in one, yet this cannot be called Aristocratia, but Metaphoricke, for it is but an house, and a litle sparke resembling as it were that gouernement.

Domus seu familia.

The first and naturall beginning of a kingdome in Greeke βασιλεια.

CHAP. 12.

But for so much as it is the nature of all thinges to encrease or decrease, this house thus encreasing & multiplying by generation, so that it cannot wel be comprehended in one habitation, and the childzen waxing bigger, stronger, wiser, and thereupon naturally desirous to rule, the father and mother sendeth them out

¶ 3

in

Prouining or
propagation
is when a man
layeth a brāch
of a Vine or
Olier, or any
other tree in-
to the ground,
so that it ta-
keth roote of
it selfe & may
liue though it
be cut then
from the first
roote or stock.

*Pagus.
Oppidum.
Civitas.*

in couples as it were by prouining or propagation. And the childe by mariage beginneth as it were to roote towards the making of a new stocke, and thereupon another house or familie. So by this propagation or prouining first of one, and then another, and so from one to another in space of time, of many houses was made a strēte or village, of many strētes and villages ioyned together a citie or borough. And when many cities, boroughes and villages were by common and mutuall consent for their conseruatiō ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most naturall beginning and source of cities, towne, nations, kingdomes, and of all ciuill societies. For so long as the great grandfather was aliue and able to rule, it was unnaturall for any of his sonnes or offspring to strīue with him for the superiortie, or to go about to gouerne or any wise to dishonour him from whom he had receiued life and being. And therefore such a one doth beare the first and naturall example of an absolute and perfect king. For he loued them as his owne childe, and nephewes, cared for them as members of his owne body, prouided for them as one hauing by long time more experience than any one or all of them. They againe honoured him as their father of whose body they came, obeyed him for his great wisdom and foresight, went to him in doubtfull cases as to an Oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe blessed noziture: for eche paine put vpon them, he esteemed as laide vpon himselfe.

The first and naturall beginning of the rule
of a few of the best men called in Greeke *Λεγονοκρατία*.

CHAP. 13.

But when that great Grandfather was dead, the sonnes of him and brethren among themselves not hauing

hauiing that reuerence to any, nor confidence of wise-
dome in any one of them, nor that trust thone to tho-
ther, betwene whome (as many times it fareth with
bʒethzen) some strifes and bʒawlinges had befoze a-
risen: To defende themselves yet from them which
were walsh and strangers, necessarily agræd among
themselves to consult in common, and to beare rule foʒ
a time in oʒder, now one, now another: so that no one
might beare always the rule, nor any one be neglected.
And by this meanes if anie one fayled during his yere
oʒ time by ignozaunce, the next (being either wiser of
himselfe, oʒ else by his bʒothers erroʒ & fault) amended
it. And in the meane while, at diuerse and most times
when bʒgent necessitie did occurre, they consulted all
those heads of families together within themselves,
howe to demeane and oʒder their matters, best foʒ the
conseruation of themselves, and eche of their families,
generally and particularly. Thus a fewe being heads
and the chiefe of their families, equall in birth and no-
bilitie, and not much different in riches, gouerned their
owne houses and the descendentes of them particular-
ly, & consulted in common vpon publike causes, agræ-
ing also vpon certaine lawes and oʒders to be kept a-
mongst them. So the best, chiefest and sagest did rule,
and thother part had no cause to strue with them, nor
had no cause nor apparance to compare with anie of
them, neither foʒ age nor discretion, nor foʒ riches oʒ
nobility. The rulers sought ech to kæpe and maintaine
their posteritie, as their sonnes and nephewes, and
such as shoulde succæde them and carie their names
when they were deade, and so render them being moʒ-
fall by nature immoʒfall by their fame and successi-
on of posteritie: hauing most earnest care to main-
taine still this their cousinage and common familie as-
well against foʒreine and barbarous nations, which
were not of their pʒogenie, tongue, oʒ religion, as a-
gainst

gainst wilde and sauage beasts. This seemeth the naturall course and beginning or image of that rule of the fewer number, which is called of the Greekes *Αριστοκρατία* and of the Latines *optimatum respublica*.

The first originall or beginning of the rule of the multitude called *πολιτεία* or *δημοκρατία*.

CHAP. 14.

NOW as time bringeth an ende of all thinges, these brethren being all dead, and their offspring encreasing daily to a great multitude, and the reuerence due the old fathers in such and so great number of equals fayling by the reason of the death or doting of the Elders: eche owing their merites of education apart to their fathers and grandfathers, and so many arising and such equalitie among them, it was not possible that they should be content to be gouerned by a fewe. For two things being such as for the which men in societie and league doe most strive, that is honour and profite no man of free courage can be contented to be neglected therein, so that they were faine of necessitie to come to that, that the moze part should beare the price alway in election of magistrates and rulers. So that either by course or by lot eche man in turne might be receiued to beare rule and haue his part of the honour, and (if any were) of the profit, which came by administration of the common wealth. For whosoever came of that old great grandfathers race, he accounted him selfe as good of birth as any other. For seruice to the common wealth all or such a number had done it, as they coulde not be accounted few. And if a few would take vpon them to vsurpe ouer the rest, the rest conspiring together would sone be masters ouer them, and ruinate them wholly. Whereupon necessarily it came to passe that the common wealth must turne and alter as befoze from one to

to a few, so now from a few to many and the most part, each of these yet willing to saue the politicke bodie, to conserue the authozitie of their nation, to defend themselves against all other, their strife beeing onely for empire and rule, and who should doe best for the common wealth, wherof they would haue experience made by bearing office and being magistrates. This I take for the first and naturall beginning of the rule of the multitude which the Greekes called *δημοκρατία*: the Latines some *Respublica* by the generall name, some *populi potestas*, some *census potestas*, I cannot tell howe latinely.

That the common wealth or policie must be according to the nature of the people.

CHAP. 15.

By this proceffe and discourse it doth appeare that the mutations & changes of fashions of gouernement in common wealthes be naturall, & doe not allwaies come of ambitio or malice: And that according to the nature of the people, so the comonwealth is to it fit and proper. And as all these iii. kindes of common wealthes are naturall, so when to each partie or espee and kinde of the people that is applied which best agreeth like a garmēt to the bodie or shoe to the foote, then the bodie politicke is in quiet, & findeth ease, pleasure and profit. But if a contrarie forme be giuen to a contrary maner of people, as when the shoe is too litle or too great for the foote, it doth hurt and encomber the conuenient vse thereof, so the free people of nature tyrannized or ruled by one against their willes, were he neuer so good, either faile of corage and were seruite, or neuer rest untill they either destroe their king & them that would subdue them, or be destroyed themselves: And againe another sort there is which without being ruled by one Prince but set at

D

libertie

libertie cannot tell what they should doe, but either through inselencie, pride, and idlenes will fall to robbery and all mischief, and to scatter and dissolue themselves, or with foolish ambition and priuate strife consume one another and bring themselves to nothing. Of both these two we haue histories enough to beare witness, as the Greekes, Romanes, Samnites, Danes, Vandals, and others. Yet must you not thinke, that all common wealthes, administrations and rulinges began on this sort, by prouining or propagation, as is before written, but many times after a great battle and long war the captaine who led a multitude of people, gathered peradventure of diuerse nations & languages, liking y^e place which he hath by force conquered, tarieth there, & beginneth a common wealth after this maner, & for the most part a kingdome. As the Gothes & Lombards in Italie, the Frenchmen in Gaule, the Saracens in Spaine and part of Fraunce, the Saxons in great Brittain, which is now called Englande: of which when that one and chiefe prince is dead, the nobler sort consult among themselves, and either choose an other head and king, or diuide it into more heads and rulers, so did the Lombards in Italie, and the Saxons in England, or take at the first a common rule and popular estate, as the Zwisers did in their cantons & do yet at this day, or else admit the rule of a certaine few, excluding the multitude and communalitie, as the Paduans, Veronenses, and Venetians haue accustomed.

The diuision of the partes and persons
of the common wealth.

CHAP. 16.

TO make all thinges yet cleare before, as we shal go, there ariseth another diuision of the partes of the common wealth. For it is not enough to say that it consisteth

sisteth of a multitude of houses & families which make streets & villages, & the multitude of the streets & villages make towne, and the multitude of towne the realme, & that freemen be considered only in this behalfe, as subiects & citizens of the common wealth, & not bondmen who can beare no rule nor iurisdiction ouer freemen, as they who be taken but as instruments & the goods and possessions of others. In which consideration also we do reiect women, as those whom nature hath made to keepe home and to nourish their familie and children, and not to medle with matters abroade, nor to beare office in a citie or common wealth no more than children and infantes: except it be in such cases as the authoritie is annexed to the blood and progenie, as the crowne, a dutchie, or an erledome for there the blood is respected, not the age nor y^e sere. Whereby an absolute Quene, an absolute Dutches or Countesse, those I call absolute, which haue the name, not by being married to a king, duke, or erle, but by being the true, right & next successors in the dignitie, and vpon whom by right of the blood that title is descended: These I say haue the same authoritie although they be women or children in that kingdome, dutchie or erledome, as they shoulde haue had if they had bin men of full age. For the right and honour of the blood, and the quietnes and suertie of the realme, is more to be considered, than either the tender age as yet impotent to rule, or the sere not accustomed (otherwise) to intermeddle with publicke affaires, being by common intendment vnderstood, that such personages neuer doe lacke the counsell of such graue and discrete men as be able to supplie all other defectes. This (as I saide) is not enough: But the diuision of these which be participant of the common wealth is one way of them that beare office, the other of them that beare none: the first are called magistrates, the second priuate men. Another the like was among the

D 2

Romanes

Romanes of *Patricij* & *plebei*, thone striving with thother a long time, the *patricij* many yeares excluding the *plebei* from bearing rule, untill at last all magistrates were made cōmon betwēne thē: yet was there another diuision of the Romanes into *senatores*, *equites* and *plebs*: the Greeks had also *εὐγενὲς* & *δυσγενὲς*. The French haue also at this day, les nobles & la populaire, or gentils homes & villaines: we in England diuide our men commonly into foure sortes, gentlemen, citizens, yeomen artificers, and labourers. Of gentlemen the first and chiefe are the king, the Prince, Dukes, marquises, earles, vicountes, barrons, and these are called *nobilitie*, and all these are called *Lords* and noblemen: next to these be knightes, esquiers and simple gentlemen.

Of the first part of gentlemen of Englande
called *Nobilitas maior*.

CHAP. 17.

Eldest sonnes
of dukes are
not earles by
birth, but
Lords, and
take their
place aboue
earles, and so
are Earles'
eldest sonnes
in respect of
barrons.

Esquires of
honour or
Lords.

Dukes, marquises, earles, vicountes, and barrons, either be created by the prince or come to that honour by being the eldest sonnes, as highest and next in succession to their parentes. For the eldest of dukes sonnes during his fathers life is called an earle, an earles sonne is called by the name of a vicount, or barron, or else according as the creation is. The creation I call the first donation and condition of the honour (given by the prince, for god seruice done by him and aduancement that the prince will bestowe vpon him) which with the title of that honour is commonly (but not alwaies) given to him and to his heires, males onely: the rest of the sonnes of the nobilitie by the rigour of the lawe be but esquires, yet in common speche, all dukes and marquises sonnes, and the eldest sonne of an earle be called *Lords*. The which name common-
ly

ly doeth agree to none of lower degree than Barons, excepting such onely, as be thereunto by some speciall office called. The Barrony or degree of Lordes doeth aunswere to the dignitie of the Senators of Rome, and the title of our nobilitie to their *patricij*: when *patricij* did betoken *Senatores aut Senatorum filios*. *Census Senatorius* was in Rome, at diuerse times diuerse, and in Englande no man is created Barron, except he may dispend of yearly reuenue, one thousand poundes or one thousand markes at the least. Vicounts, Carles, Marqueses and Dukes more according to the proportion of the degree and honour, but though by chaunce he or his sonne haue lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *Senatores Romani* were *amoti Senatu*) so sometimes they are not admitted to the vpper house in the Parliament, although they keepe the name of Lord still.

Of the second sort of Gentlemē which may be called *Nobilitas minor*, and first of Knights.

CHAP. 18.

NO man is a knight by succession, not the King or prince. And the name of prince in England ^{is} *princeps* betokeneth the kinges eldest sonne or prince of Wales: although the King himselfe, his eldest sonne, and all Dukes be called by generall name Princes. But as in Fraunce the kinges eldest sonne hath the title of the Daulphine, and he or the next heire apparant to the Crowne is *Monſire*, so in England the kinges eldest sonne is called ^{is} *princeps* the Prince. Knightes therefore be not borne but made, either before the battle to encourage them the more to aduenture their liues, or after the conflict, as aduancement for their hardinesse and manhood alreadie shewed: or out of the warre

for some great seruice done, or some good hope throught
the vertues which doe appeare in them. And they are
made either by the king himselfe, or by his commission
and royall authoritie, giuen for the same purpose, or by
his lieutenant in the warres, who hath his royall and
absolute power committed to him for that time. And
that order seemeth to aunswere in part to that which
the Romanes called *Equites Romanos*, differing in some
pointes, and agreeing in other, as their common wealth
and ours do differ and agree: for neuer in all pointes
one common wealth doeth agree with an other, no nor
long time any one common wealth with it selfe. For al
chaungeth continually to more or lesse, and still to di-
uerse & diuerse orders, as the diuersitie of times do pre-
sent occasion, and the mutabilitie of mens wittes doeth
inuent and assay newe wayes, to reforme and amende
that wherein they doe finde fault. *Equites Romani* were
chose *n ex censu*, this according to their substance and ri-
ches. So be knights in England most commonly, ac-
cording to the yearely reuenuue of their landes being
able to maintaine that estate: yet all they that had *E-
questrem censum*, *non legebantur equites*. No more are
all made knightes in Englande that may dispende a
knightes land or fee, but they onely whom the king wil
so honour. The number of *Equites* was vncertaine, and
so it is of knightes, at the pleasure of the Prince. *Equi-
tes Romani* had *equum publicum*. The knightes of Eng-
land haue not so, but finde their owne horse themselves
in peace time, and most vsually in warres.

Census equester was among the Romanes at di-
uerse times of diuerse value: but in Englande whoso-
euer may dispende of his free landes 40. l. sterling of
yearely reuenuue by an olde Law of Englande either at
the coronation of the king, or mariage of his daughter,
or at the dubbing of the Prince, Knight, or some such
great occasion, may be by the king compelled to take
that

that order & honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some who for causes are not thought worthy of that honour and yet haue abilitie, neither be made knights though they would, and yet pay the fine. xl. l. sterling, at that time when this order began, maketh now Cxx. l. of currant money of England: as I haue moze at large declared in my booke of the diuersitie of standerdes or the balor of monies.

When the Romanes did write *Senatus populusque Romanus*, they seemed to make but two orders, that is of the Senate and of the people of Rome, and so in the name of people they contained *equites* and *plebem*: so when we in England doe say the Lordes and the commons, the knights, Esquires, & other gentlemen, with citizens, burgeses & yeomen be accounted to make the commons. In ordaining of lawes the Senate of Lords of England is one house, where the Archbishops and Bishops also be, and the King or Quene for the time being as chiefe: the knights and all the rest of the gentlemen, citizens & burgeses which be admitted to consult vpon the greatestt affaires of the Realme be in another house by themselves, and that is called the house of the commons, as we shal moze clearely describe whā we speake of the Parliament. Whereupon this word knight is deriued, and whether it doe betoken no moze but that which *miles* doth in latine, which is a souldier, might be moued as a question. The word souldier now seemeth rather to come of sould and paiment, and moze to betoken a waged or hyzed man to fight than otherwise, yet Caesar in his Commentaries called soldures in the tongue gallois, men who deuoted & swoze themselves in a certaine band or othe one to another and to the captaine, which order if the Almains did followe, it may be that they who were not hyzed but being of the nation, vpon their owne charges and for their ad-
D 4 uauces

Verè Lantz-
knecht, lan-
cearius: a
speareman.

Eques auri-
tus.

Sire quia Se-
nior.

uauncement, and by such common oth or band that did followe the warres, were (possibly) ^{not} called knightes or *milites*, and now among the Almaines some are called lanceknights as souldiers of their band not hyred, although at this day they be for the most part hirelings. Or peradventure it may be that they which were next about the prince as his garde or seruantes picked or chosen men out of the rest being called in the Almaine language, knighten, which is as much to say as seruantes: these men being found of good seruice, the word afterward was taken for an hono^r, and for him who maketh profession of armes. Our language is so chaunged that I dare make no iudgement therof. Now we call him knight in English that the French calleth cheualier, and the latine *equitem* or *equestris ordinis*.

And when any man is made a knight, he kneeling downe is stroken of the Prince, with his sword naked vpon the backe or shoulder, the Prince saying: sus or fois chiuallier au nom de Dieu and (in times past) they added S. George, and at his arising the Prince saith, auauncer. This is the manner of dubbing of knights at this present: and that terme dubbing was the olde terme in this point, and not creation. At the coronation of a king or Quene, there be knights of the bath made with long and moze curious ceremonies: But howsoeuer one be dubbed or made a knight, his wife is by and by called a Ladie as well as a Barons wife: he himselfe is not called Lorde, but hath to his name in common appellation added this syllable, Sir, as if he befoze were named, Thomas, William, Iohn, or Richard, afterward he is alwayes called Sir Thomas, Sir William, Sir Iohn, Sir Richard, and that is the title which men giue to knightes in Englande. This may suffice at this time, to declare the order of knight-hood, yet there is an other order of knights in England which be called the knights of the Garter. King Edward

Edward the third, after he had obtained manie notable victozies, King Iohn of Fraunce, King Iames of Scot- lande, being both prisoners in the towler of London at one time, and king Henrie of Castell the bastard expuls- ed out of his realme, and Don Petro restozed vnto it by the pzince of Wales and Duke of Aquitaine called the blacke pzince, inuented a societie of honour, and made a choise out of his owne realme and dominions, and all Chzistendom: and the best and most excellent re- noumed persons in vertues and honour, he did adozne with that title to be knightes of his ozder, gaue them a garter decked with golde, pearle and pzecious stoness, with the buckle of gold, to weare daily on the left legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall apparell both of stufte and fa- shion erquisite & heroicall, to weare at high feastes, as to so high and princely an ozder was meete: of which ozder he and his successozs Kinges and Quænes of England to be the soueraigne, and the rest by certaine statutes and lawes among themselues, be taken as bzeethzen and fellowes in that ozder, to the number of xxvi. But because this is rather an ornament of the realme than any policie oz gouernment therof, I leaue to speake any further of it.

Of Esquiers.

CHAP. 19.

Escuter oz esquier (which we call commonly squire) is a French worde, and betokeneth *Scutigerum* oz *Armigerum*, and be all those which beare armes (as we call them) oz armozies (as they terme them in French) which to beare is a testimonie of the nobilitie oz race from whence they doe come. These be taken for no distinct ozder of the common wealth, but do goe with the residue of the gentlemen: saue that (as I take it) they

they be those who beare armes, testimonies (as I haue saide) of their race, and therefore haue neither creation nor dubbing: or else they were at the first cosserels or the bearers of the armes of Lordes or knightes, and by that had their name for a dignitie and honour giuen to distinguish them from a common souldier called in latine *Gregarius miles*.

Of Gentlemen.

CHAP. 20.

Gentlemen be those whom their bloud and race doth make noble and knowen, ^{Euryenis} in Greeke, the Latines call them all *Nobiles*, as the French Nobles, ^{Euryenis} or *Nobilitas* in Latine is defined, honour or title giuen, for that the auncestors hath bin notable in riches or vertues, or (in fewer wordes) olde riches or prowes remaining in one stock. Which if the successors do keepe and followe, they be *verè nobiles* and ^{Euryenis}: if they doe not, yet the fame and wealth of their ancestors serue to couer the so long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reason, for the Etimologie of the name serueth the efficacie of the worde. *Gens* in Latine betokeneth the race and surname, so the Romaines had Cornelios, Sergios, Appios, Fabios, Aemilios, Pisones, Iulios, Brutos, Valerios, of which who were Agnati, and therefore kept the name, were also Gentiles: and remaining the memorie of the glorie of their progenitors fame, were gentlemē of that or that race. This matter made a great strife among the Romanes, when those which were *Noni homines* were more allowed, for their vertues new and newly shewen, than the olde sinell of auntient race newly defaced by the cowardise and euill life of their nephewes and discendauntes could make the other to be, Thus the Cicerones, Catones, and Marij had

had much adoe with those auncients, and therefore said
Iuuenalis:

Malo pater tibi sit Therfites, dummodo tu sis
Aeacidi similis vulcaniaque arma capeffas,
Quam te Therfiti similem producat Achilles.

But as other common wealthes were faine to doe,
so must all princes necessarilie followe, that is, where
vertue is to honour it: and although vertue of auncient
race be easier to be obtained, aswell by the example of
the progenitors, which encourageth, as also through
habilitie of education and bringing vp, which enableth,
and the lastly enrac'd love of tenants & neibors to such
noblemen and gentlemen, of whom they holde and by
whom they doe dwell, which pricketh forward to ensue
in their fathers steps. So if all this doe faile (as it
were great pitie it should) yet such is the nature of
all humaine thinges, and so the world is subiect to mu-
tabilitie, that it doth many times faile: but whē it doth,
the prince and common wealth haue the same power
that their predecessors had, and as the husbandmā hath
to plant a new tree where the olde fayleth, so hath the
prince to honour vertue where he doth find it, to make
gentlemen, esquiers, knights, barons, earles, marquises,
& dukes, where he seeth vertue able to beare that
honour or merits, and deserues it, & so it hath alwayes
bin vsed among vs. But ordinarily the king doth on-
ly make knights and create barons or higher degrees:
for as for gentlemen, they be made good cheape in Eng-
land. For whosoever studieth the lawes of the realme,
who studieth in the vniuersities, who professeth libe-
rall sciences, and to be short, who can liue idly and
without manuell labour, and will beare the port,
charge and countenaunce of a gentleman, he shall be
called master, for that is the title which men giue to
esquiers and other gentlemen, and shall be taken for a
gentleman: for true it is with vs as is saide, *Tanti eris*

alijs quanti tibi feceris: (and if néede be) a king of Heraulds shal also giue him for money, armes newly made and inuented, the title whereof shal pretende to haue bene found by the sayd Herauld in perusing and view- ing of olde registers, where his auncellores in times past had bin recorded to beare the same: Or if he wil do it moze truely and of better faith, he will write that for the merites of that man, and certaine qualities which he doth see in him, and for sundrie noble actes which he hath perfourmed, he by the authoritie which he hath as king of Herauldes & armes, giueth to him and his heires these and these armes, which being done I thinke he may be called a squire, for he beareth euer after those armes. Such men are called sometime in scozne gentlemen of the first head.

Whether the maner of England in making gentlemen so easily is to be allowed.

CHAP. 21.

A Man may make doubt & question whether this maner of making gentlemen is to be allowed or no, & for my part I am of that opinion y it is not amisse. For first the prince loseth nothing by it, as he should doe if it were as in France: for the yeomen or husbandmā is no moze subiect to taile or tare in Englande than the gentleman: no, in euerie payment to the king the gentleman is moze charged, which he beareth the gladlier and dareth not gaine saie for to saue and keepe his honour and reputation. In any shew or muster or other particular charge of the towne where he is, he must open his purse wider and augment his portion aboue others, or else he doth diminish his reputation. As for their outward shew, a gentleman (if he wil be so accepted) must go like a gentleman, a yeoman like a yeoman, and a rascall like a rascall: and if hee be called to the

the warres, he must and will (whatsoever it cost him) array himselfe and arme him according to the vocation which he pretendeth: he must shewe also a moze manly courage & tokens of better education, higher stomacke and bountifuller liberalitie than others, and keepe about him idle seruantes, who shall doe nothing but waite vpon him. So that no man hath hurt by it but he himselfe, who hereby perchance will beare a bigger saile than he is able to maintaine. For as touching the policie and gouernment of the common wealth, it is not those that haue to do with it, which will magnifie themselves, and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tryed and well knowen, as shall be declared hereafter.

Of Citizens and Burgeses.

CHAP. 22.

NEXT to gentlemen, be appointed citizens and burgeses, such as not onely be free and receiued as officers within the cities, but also be of some substance to beare the charges. But these citizens and burgeses, be to serue the common wealth, in their cities & burrowes, or in corporate towne where they dwell. Generally in the Shires they bee of none account, saue onely in the common assembly of the Realme to make lawes, which is called the Parliament. The auncient Cities appoint iiii. and ech borough ij. to haue voices in it, and to giue their consent or dissent in the name of the citie or borough for which they be appointed.

Of Yeomen.

CHAP. 23.

THose whom we call yeomen next vnto the nobilitie, Knights and Squires, haue the greatest charge and doings

doings in the common wealth, or rather are moze tra-
nailed to serue in it than all the rest : as shall appeare
hereafter. I call him a yeoman whom our Lawes doe
call *Legalem hominem*, a woꝛde familiar in wꝛittes and
enquestes, which is a freeman boꝛne English, and may
dispend of his owne frē lande in yerely reuēue to the
summe of xl. s. sterling : This maketh (if the iust va-
lue were taken now to the propoztion of monies) vi. l.
of our currant mony at this pꝛesent. This sort of peo-
ple confesse themselves to be no gentlemen, but giue
the honour to al which be or take vpon them to be gen-
tlemen, and yet they haue a certaine pꝛeeminence and
moze estimation than labozers and artificers, and com-
monly liue wealthily, kēpe good houses, & do their busi-
nesse, & trauaile to acquire riches: these be (foꝛ the most
part) sermoꝛs vnto gentlemen, which with grasing, fre-
quenting of markettes, and kēping seruants not i-
dle as the gentleman doth, but such as get both their
owne liuing and parte of their maisters : by these
meanes doe come to such wealth, that they are able
and daily doe buy the landes of vnchꝛistie gentlemen,
and after setting their sonnes to the schole at the Uni-
uersities, to the lawe of the Realme, or other wise lea-
uing them sufficient landes whereon they may liue
without labour, doe make their saide sonnes by those
meanes gentlemen. These be not called masters, foꝛ
that (as I saide) pertaineth to gentlemen onely: But
to their surnames, men adde godman: as if the sur-
name be Luter, Finch, White, Browne, they are
called, godman Luter, godman White, godman
Finch, godman Browne, amongst their neighbours,
I meane not in matters of impoꝛtance or in lawe. But
in matters of Lawe and foꝛ distinction, if one were a
knight they would wꝛite him (foꝛ example sake) Sir
Iohn Finch knight, so if he be an Esquier, Iohn Finch
Esquier or Gentleman, if he be no Gentleman, Iohn
Finch

Finch yeoman. For amongst the Gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, be written Esquiers. So amongst the husbandmen labourers, lowest and rascall sort of the people such as be exempted out of the number of the rascabilitie of the popular be called and written yeomen, as in the degree next unto gentlemen. These are they which olde Cato calleth *Aratores* and *optimos cives in Republica*: and such as of whom the writers of common wealths praise to haue manie in it. Aristoteles namely reciteth *πολυ μιν ἀεισεν*: these tende their owne businesse, come not to meddle in publike matters and iudgements but when they are called, and glad when they are deliuered thereof, are obedient to the gentlemen and rulers, and in warre can abide trauaile and labour as men vsed to it, yet wishing it soone at an ende that they might come home & liue of their owne. When they are forth they fight for their Lordes of whom they hold their landes, for their wiues and children, for their countrey and nation, for praise and honour, against they come home, and to haue the loue of their Lord and his children to be continued towarde them and their children, which haue aduentured their liues to and with him and his. These are they which in the old world gat that honour to Englande, not that either for witte, conduction, or for power they are or were euer to be compared to the gentlemen, but because they be so manie in number, so obedient at the Lordes call, so strong of bodie, so harde to endure paine, so couragious to aduenture with their Lord or Captaine going with, or before them, for else they be not hastie nor neuer were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affraide all France, that would rather die all, than once abandon the knight or gentleman their captaine,

Geman in the
Saxon is a
maried man,
and hereof
commeth our
yeoman, for
after mariage
men are ac-
counted set-
tled members
in the comon
wealth, but
not before.
A yonker
commeth of
young herre
which is a son
and heire to a
gentleman or
a young
gentleman.

who at those daies commonly was their Lorde, and whose tenantes they were, readie (besides perpetuall shame) to be in danger of vndoing of themselves, & all theirs if they should shewe any signe of cowardise or abandon the Lorde, Knight or Gentlemen of whom they helde their liuing. And this they haue amongst them from their fozefathers tolde one to an other. The gentlemen of Fraunce and the yeomen of England are renowned, because in battle of horsemen Fraunce was many times too good for vs, as we againe alway for them on fote. And Gentlemen for the most part be men at armes and horsemen, and yeomen commonlie on fote: howsoeuer it was, yet the gentlemen had alwaies the conduction of the yeomen, and as their captaines were eyther a fote or vpon a litle nagge with them, and the Kinges of Englande in foughten battles remaining alwaies among the fofemen, as the Frenche Kings among their horsemen. Eche Prince therby, as a man may gesse, did shew where he thought his strength did consist. What a yeoman is I haue declared, but from whence the word is deriued it is hard to say: it cannot be thought that yeomen should be said a young man, for commonlie we doe not call any a yeoman till he be married, and haue childe, and as it were haue some authoritie among his neighbours. Yonker in lowe dutch betokeneth a meane gentleman or a gay fellowe. Possible our yeomen not being so bolde as to name themselves gentlemen, when they came home, were content when they had heard by frequentation with lowe dutchmen of some small gentleman (but yet that would be counted so) to be called amongst them, yonker man, the calling so in warres by mockage or in sport thone an other, when they come home, yonker man, and so yeoman: which worde nowe signifieth among vs, a man well at ease and hauing honestlie to liue, and yet not a gentleman: whatsoeuer

uer that worde yonker man, yonke man, or yeoman
doth moze or lesse signifie to the dutch men.

Of the fourth sort of men which
doe not rule.

CHAP. 24.

THe fourth sort or classe amongst vs, is of those
which the olde Romans called *capite censij proletarij*
or *opera*, day labourers, poze husbandmen, yea mar-
chantes or retailers which haue no free lande, copy-
holders, and all artificers, as Taylers, Shomakers,
Carpenters, Brickemakers, Bricklayers, Masons, &c.
These haue no voice nor authoritie in our common
wealth, and no account is made of them but onelie to
be ruled. not to rule other, and yet they be not altoge-
ther neglected. For in cities and corporate towne for
default of yeomen, enquests and Iuries are impaneled
of such manner of people. And in villages they be com-
monly made Churchwardens, alecunners, and manie
times Constables, which office toucheth moze the com-
mon wealth, and at the first was not imployed vppon
such lowe and base persons. Wherefoze generally to
speake of the common wealth, or policie of Englande,
it is gouerned, administred, & manured by three sortes
of persons, the Prince, Monarch, and head gouernner,
which is called the King, or if the crowne fall to a wo-
man, the Quene absolute, as I haue heerefoze saide:
In whose name and by whose authoritie all things are
administred. The gentlemen, which be diuided into
two partes, the Baronie or estate of Lordes consey-
ning barons and all that be aboue the degre of a ba-
ron, (as I haue declared befoze): and those which be
no Lords, as knightes, Esquires, and simplye gentle-
men. The thirde and last sort of persons is named
If the

the yeomanrie: each of these hath his part and administration in iudgements, corrections of defaultes, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appear hereafter.

THE SECOND booke.

Of the Parliament and the authoritie thereof.

CHAP. I.



The most high and absolute power of the realme of Englande, consisteth in the Parliament. For as in warre where the king himselfe in person, the nobilitie, the rest of the gentilitie, and the yeomanrie are, is by force and power of Englande: so in peace & consultation where the Prince is to give life, and the last and highest commaundement, the Baronie for the nobilitie and higher, the knightes, esquires, gentlemen and commons for the lower part of the common wealth, the bishoppes for the clergie be present to aduertise, consult and shew what is good and necessarie for the common wealth, and to consult together, and upon mature deliberation euerie bill or lawe being thise reade and disputed bypon in either house, the

the other two partes first each a part, and after the Prince himselfe in p[re]sence of both the parties doeth consent vnto and alloweth. That is the Princes and whole realmes d[ee]de: whereupon iustlie no man can complaine, but must accommodate himselfe to finde it good and obey it.

That which is done by this consent is called firme, stable, and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, giueth orders for thinges past, and for thinges hereafter to be followed, changeth rightes, and possessions of private men, legitimateth bastards, establissheth formes of religion, altereth weightes and measures, giueth formes of succession to the crowne, defineth of doubtful rightes, whereof is no lawe already made, appoinseth subsidies, tailles, taxes, and impositions, giueth most free pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absolveth them whom the Prince will put to that tryall: And to be short, all that ever the people of Rome might do either in *Centuriatis comitijs* or *tributis*, the same may be done by the parliament of Englande, which representeth & hath the power of the whole realme both the head and the bodie. For everie Englishman is entend to be there present, either in person or by procuration and attornies, of what preheminance, state, dignitie, or qualitie soever he be, from the Prince (be he King or Duene) to the lowest person of Englande. And the consent of the Parliament is taken to be everie mans consent.

Alias Tribu-
nitijs.

The forme of holding the Parliament.

CHAP. 2.

The Prince sendeth forth his rescripts or writtes to every duke, marques, baron, and every other Lorde

¶ 2

tempo

tempozall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is commonly at the least fortye dayes): he sendeth also writtes to the Sherifes of euery shire to admonish the whole shire to chosse two knightes of the parliament in the name of the shire, to heare and reason, and to giue their aduise and consent in the name of the shire, and to be pzeent at that day: likewise to euery citie and towne which of ancientie hath bin wont to finde burgeses of the parliament, so to make election that they might be pzeent there at the first day of the parliament. The knightes of the shyre be chosen by all the gentlemen and yeomen of the shyre, pzeent at the day assigned for the election: the voice of any absent can be counted for none. Peomen I call here (as befoze) that may dispende at the least xl. s. of yearely rent of free lande of his owne. These meeting at one day, the two who haue the moze of their voices be chosen knightes of the shyre for that parliament: likewise by the pluralitie of the voices of the citizens and burgeses be the burgeses elected. The first day of the parliament the Prince and all the Lordes in their robes of parliament do mete in the higher house, where after prayers made, they that be pzeent are written, and they that be absent vpon sickness or some other reasonable cause (which the prince will allowe) doe constitute vnder their hande and seale some one of those who be pzeent as their pzocurer or atturney to giue voice for them, so that by pzeence or atturney and pzorey they be all there, all the princes and barrons and all archbishops and bishops, and (when abbots were) so manie abbots as had voice in parliament. The place where the assembly is, is richly fapessed and hanged, a princely and royal thzone as appertaineth to a king, set in the middell of the higher place thereof. Next vnder the prince sitteth the Chancelloz, who is the voice and

Oratoz

Orator of the Prince. On the one side of that house or chamber sitteth the archbishops and bishops, ech in his ranke, on the other side the dukes and barons. In the middest thereof vpon woolsackes sitteth the Judges of the realme, the master of the routes, and the secretaries of estate. But these that sit on the woolsackes haue no voice in the house, but onely sit there to aunswere their knowledge in the law, when they be asked if any doubt arise among the Lordes. The secretaries to aunswere of such letters or thinges passed in counsell whereof they haue the custodie and knowledge: and this is called the vpper house, whose consent and dissent is given by ech man seuerally and by himselfe, first for himselfe, and then seuerally for so many as he hath letters and pories, when it cometh to the question, saying onely content or not content, without further reasoning or replying. In this meane time the knights of the shires and burgeses of the parliament (for so they are called that haue voice in parliament, and are chosen as I haue said before, to the number betwixt iij. C. and iij. C.) are called by such as it pleaseth the Prince to appoint, into an other great house or chamber by name, to which they aunswere: and declaring for what theye or towne they aunswere, then they are willed to choise an able & discrete man to be as it were the mouth of them all, & to speake for and in the name of them, and to present him so chosen by them to the Prince: which done they comming al with him to a barre, which is at the nether end of the vpper house, there he first praiseth the prince, then maketh his excuse of vnabilitie, and prayeth the prince that he would command the commons to choise another. The Chancelor in the princes name doeth so much declare him able, as he did declare himselfe vnable, and thanketh the commons for choosing so wise, discrete and eloquent a man, and willet them to goe and consult of lawes for the comon wealth. Then the spea-

¶ 3

ker

ker maketh certaine requests to the p^rince in the name of the commons, first that his maiestie would be content that they may vse and enioy all their liberties and p^riuiledges that the common house was wont to enioy. Secondly that they might franchely and frely say their minds in disputing of such matters as may come in question, and that without offence to his Maestie. Thirdly that if any should chaunce of that lower house to offend or not to do or say as should become him, or if any should offend any of them being called to that his highnes court: That they theselues might (according to the ancient custome) haue the punishment of them. And fourthly, that if there came any doubt, whereupon they shal desire to haue thadvice or conference with his Maestie or with any of the Lordes, that they might doe it: All which hee promiseth in the commons names that they shall not abuse, but haue such regarde as most faithfull, true and louing subiectes ought to haue to their p^rince.

The Chaunceloz answereth in the p^rinces name, as apperteyneth. And this is all that is done for one day, & sometime two. Besides the Chaunceloz, there is one in the vpper house who is called Clarke of the Parliament, who readeth the bills. For all that cometh in consultation either in the vpper house or in the neather house, is put in w^riting first in paper, which being once read, he that will, riseth vp and speaketh with it or against it: and so one after another so long as they shall thinke good. What done they goe to another, and so another bill. After it hath bin once or twise read, and doth appeare that it is somewhat liked as reasonable, with such amendment in woordes and peraduenture some sentēces as by disputation seemeth to be amended: In the vpper house the Chaunceloz asketh if they will haue it engrossed, that is to say put into parchment: which done, and read the third time, and that eftsones
if

if any be disposed to object disputed againe among them, the Chauncelor asketh if they will goe to the question: and if they agree to goe to the question, then he sayth, here is such a lawe or act concerning such a matter, which hath bene thise read here in this house, are ye content that it be enacted or no? If the not contentes be moe, then the bill is dashed, that is to say the lawe is annihilated and goeth no farther. If the contentes be the moze, then the Clarke writeth vnderneath: *Soit baille aux commons.* And so when they see time they send such bills as they haue approued by two or thre of those which doe sit on the woolsacks to the commons: who asking licence, and comming into the house, with due reuerence, saith to the speaker: *Passer speaker, my Lordes of the vpper house haue passed among them and thinke good, that there should be enacted by Parliament such an act, and such an act, and so readeth the titles of that act or actes.* They pray you to consider of them, and shew them your aduise, which done they goe their way. They being gone and the doore againe shut, the speaker rehearseth to the house what they sayde. And if they be not busie disputing at that time in an other bill, he asketh them streightway if they will haue that bill or (if there be moe) one of them.

In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see and be scene of them all, hath before him in a lower seate his Clarke, who readeth such bills as be first propounded in the lower house, or be sent down from the Lords. For in that point ech house hath equall authoritie, to propounde what they thinke meete, either for thabrogating of some lawe made before, or for making of a newe. All bills be thise in thre diuerse dayes read and disputed vpon, before they come to the question. In the disputing is a maruelous good order vsed in the lower house. He that standeth by

bareheaded is vnderstanded that hee will speake to the bill. If moe stande bype, who that first is iudged to arise, is first heard, though the one doe prayse the law, the other disswade it, yet there is no altercation. For euerie man speaketh as to the speaker, not as one to an other, for that is against the order of the house. It is also taken against the order, to name him whom ye doe confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill, and gaue this and this reason. And so with perpetuall Duration not with altercation, he goeth through till he do make an end. He that once hath spoken in a bill though he be confuted straight, that day may not replie, no though he would chaunge his opinion. So that to one bill in one day one may not in that house speake twise, for else one or two with altercation would spende all the time. The next day he may, but then also but once.

No reuiling or nipping wordes must be vsed. For then all the house will crie, it is against the order: and if any speake vnreuerentlie or seditiouslie against the Prince or the priue Counsell, I haue seene them not onely interrupted, but it hath bene moued after to the house, and they haue sent them to the Tower. So that in such a multitude, and in such diuersitie of mindes, and opinions, there is the greatest modestie and temperance of speech that can be vsed. Neuerthelesse with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it be for vrgent causes and halting of time. At the afternoone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moue or disswade it. But when any bill is read, the speakers office is as brieflie and as plainly as he may to declare the effect thereof to the house. If the commons doe assent to such billes as be sent to them first
agreed

agreed vpon from the Lords thus subscribed, Les commons ont assentus, so if the Lordes doe agree to such billes as be first agreed vpon by the Commons, they sende them downe to the speaker thus subscribed, Les Seigneurs ont assentus. If they cannot agree, the two houses (for euerie bill from whence soeuer it doth come is thise reade in each of the houses) if it be vnderstode that there is anie sticking, sometimes the Lordes to the Commons, sometime the Commons to the Lordes doe require that a certaine of each house may mete together, and so ech part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part not alwaies either part agrees to others billes.

In the vpper house they giue their assent and dissent ech man seuerally and by himselfe first for himselfe, and then for so many as he hath p^{ro}rie. When the Chanceller hath demanded of them whether they will goe to the question after the bill hath bene thise reade, they saying onely content or not content, without further reasoning or replying: and as the more number doeth agree, so it is agreed on, or dashed.

In the neather house none of them that is elected either knight or Burges can giue his voice to an other nor his consent nor dissent by p^{ro}rie. The more part of them that be present onely maketh the consent or dissent. After the bill hath bene twice reade, and then engrossed and effswones reade and disputed on ynough as is thought: the speaker asketh if they will goe to the question. And if they agree he holdeth the bill vp in his hande and sayeth, as manie as will haue this bill goe forwarde, which is concerning such a matter, say yea. When they which allowe the bill crie yea, and as many as will not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they diuide the house, the speaker

ker saying, as many as doe allowe the bill goe do wne with the bill, and as many as do not sitte still. So they diuide themselues, and being so diuided they are num- bred who make the moze part, and so the bill doeth speede. It chaunceth sometime that some part of the bill is allowed, some other part hath much contrariety and doubt made of it: and it is thought if it were amended it would goe forwarde. Then they chouse certaine com- mittees of them who haue spoken with the bil & against it to amende it, and bring it in againe so amended, as they amongst them shall thinke mete: and this is be- fore it is engrossed, yea & some time after. But y agree- ment of these committees is no preiudice to the house. For at the last question they will either accept it or dath it as it shall seeme good, notwithstanding y what- soeuer the committees haue done.

Thus no bill is an act of Parliament, ordinaunce, or edict of law, vntill both the houses seuerally haue a- greed vnto it, after the order aforesaide, no nor then neither. But the last day of that parliament or session the Prince commeth in person in his parliament robes, and sitteth in his state: all the vpper house sitteth about the Prince in their states and order in their robes. The speaker with all the common house commeth to the barre, and there after thankesgiuen first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince, for that hee hath so great care of the good gouernement of his people, and for cal- ling them together to aduise of such thinges as should be for the reformation, establisshing & ornament of the common wealth: the Chaunceller in y Princes name giueth thanks to the Lords & commons for their paines and trauailes taken, which he saith the Prince wil re- member and recompence when time and occasion shall serue, & that he for his part is ready to declare his plea- sure concerning their proceedinges, whereby the same may

may haue perfect life & accomplishment by his p^rince's
lie authoritie, and so haue the whole consent of the
Realme. Then one reade the title of euerie act which
hath passed at that session, but only in this fashion: An
act cōcerning such a thing &c. It is marked there what
the P^rince doth allowe, and to such he sayth: Le roy o^r
la royne le veult. And those be taken nowe as perfect
lawes and o^rdinances of the Realme of Englande and
none other, and as shortly as may be put in print, ex-
cept it be some p^rivate cause o^r lawe made for the be-
nefit o^r p^reiudice of some p^rivate man, which the Ro-
mans were wont to call *privilegia*. These be onely ex-
emplified vnder the seale of the Parliament, and for
the most part not p^rinted. To those which the P^rince li-
keth not, he answereth, Le roy o^r la royne s'aduisera, and
those be accounted vtterly dashed and of no effect.

This is the order and forme of the highest and most
authentical court of Englande, by vertue whereof all
those thinges be established whereof I spake before, and
no other meanes accountedailable to make any newe
forfeiture of life, member, o^r landes of anie English
man, where there was no lawe o^rdayned for it be-
fore. Nowe let vs speake of the saide partes when
they be seuerall.

Of the Monarch King or Queene of Englande.

CHAP. 3.

The P^rince whom I nowe call (as I haue often be-
fore) the Monarch of Englande, King o^r Quene,
hath absolutelie in his power the authoritie of warre
and peace, to desie what P^rince it shall please him, and
to bid him warre, and againe to reconcile himselte and
enter into league o^r truce with him at his pleasure o^r

the aduice onely of his priuie counsell. His priuie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the knights, and Esquiers, such and so manie as he shall thinke good, who doth consult daily, or when nede is of the weightie matters of the Realme, to giue therein to their Prince the best aduice they can. The Prince doth participate to them all, or so many of them, as he shall thinke good, such legations and messages as come from forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and keepeth so many ambassades and letters sent vnto him secreete as he will, although these haue a particular oth of a counseller touching faith and secrets administréd vnto them when they be first admitted into that companie. To that heerein the kingdome of Englande is farre more absolute than either the duke, dome of Venice is, or the kingdom of the Lacedemonians was. In warre time, & in the field the Prince hath also absolute power, so that his worde is a law, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserue, without processe of lawe or forme of iudgement. This hath bene sometime vsed within the Realme befoze any open warre in sudden insurrections and rebellions, but that not allowed of wise and graue men, who in that their iudgement had consideration of the consequence and example, asmuch as of the present necessitie, especiallie, when by anie meanes the punishment might haue bene done by order of lawe. This absolute power is called marciall lawe, and euer was and necessarilie must be vsed in all camps and hostes of men, where the time nor place doe suffer the tarriance of pleading and processe, be it neuer so short, and the important necessitie requireth speedie execution, that with more alwe the souldier might be kept in more strait obedience, without which neuer captaine can doe anie thing baileable in the warres.

The

The prince vseth also absolute power in crying and decreeing the money of the realme by his proclamation onely. The mony is alwaies stamped with the princes image and title. The forme, fashon, maner, weight, finenesse, and basenesse therof, is at the discretion of the Prince. For whom should the people trust more in that matter than their prince, seeing the coine is only to certifye the goodnesse of the metall and the weight, which is affirmed by the Princes image and marke? But if the prince will deceiue them and giue them copper for siluer or golde, or enhaunce his coyne more than it is worth, he is deceiued himselfe, aswell as he doth goe about to deceiue his subiects. For in the same sort they pay the Prince his rentes and customes. And in time they will make him pay rateably or more for meate, drinke and victualles for him and his, and for their labour: which experience doeth teach vs now in our dayes to be done in all regions. For there euer hath bene, & euer wil be a certaine proportiō betwene the scarcitie and plentie of other thinges, with gold and siluer, as I haue declared more at large in my booke of monie. For all other measures and weightes, aswell of drie thinges as of wet, they haue accustomed to be established or altered by the Parliament, and not by the princes proclamation onely.

The prince vseth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for transgression of Lawes, where the payne of the lawe is applyed onely to the Prince. But where the forfaiture (as in popular actions it chaunceth many times) is part to the Prince, the other part to the declarator, detector or informer, there the Prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with vs at the Princes suite) the Prince giueth absolution or pardon: yet with a clause, *modo & rectius*

rectus in curia, that is to say, that no man object against the offendo. Whereby notwithstanding that he hath the princes pardon if the person offended will take upon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serue the offendo.

The prince giueth all the chiefe and highest offices or magistracies of the realme, be it of iudgement or dignitie, temporall or spirituall, and hath the tenthes and first frutes of all Ecclesiasticall promotions, except in the Vniuersities and certaine Colledges which be exempt.

All writtes, exetutions and commaundementes be done in the princes name. We doe say in England the life and member of the kinges subiectes are the kinges onely, that is to say no man hath hault nor moyenne iustice but the king, nor can hold plea thereof. And therefore all those pleas, which touche the life or the mutilation of man, be called pleas of the crowne, nor can be done in the name of any inferiour person than he or shee that holdeth the crowne of Englande. And likewise no man can giue pardon thereof but the prince onely: Although in times past there were certaine Countie Palatines, as Chester, Durham, Glouc, which were hault iusticers, and writtes went in their name, and also some Lordes marchers of Wales, which claymed like priuiledge. All these are nowe worne away. The supreme iustice is done in the kinges name, and by his authoritie onely.

The Prince hath the wardshippe and first marriage of all those that hold landes of him in chiefe. And also the gouernement of all soles naturall, or such as be made by aduenture of sicknes, and so continue, if they be landed. This being once graunted by act of Parliament (although some inconuenience hath bene thought to grow thereof, & sith that time it hath bene thought
very

verie unreasonable) yet once annexed to the crowne who ought to go about to take the clubbe out of Hercules hand. And being governed iustly & rightly, I see not so much inconuenience in it, as some men would make of it: diuerse other rights and preheminences the prince hath which be called prerogatiues royals, or the prerogative of the king, which be declared particularly in the booke of the common lawes of England.

To be shor't the prince is the life, the head, and the authoritie of all thinges that be done in the realme of England. And to no prince is done more honor and reuerence than to the King and Quene of Englande, no man speaketh to the prince nor serueth at the table but in adozation and kneeling, all persons of the realme be bareheaded befoze him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walke, yea though the prince be not there, no man dare farrie there but bareheaded. This is vnderstande of the subiects of the realme: For all strangers be suffered there and in all places to vse the maner of their countrie, such is the ciuilitie of our nation.

The chiefe pointes wherein one common wealth doth differ from another.

CHAP. 4.

NOW that we haue spoken of the parliament (which is the whole vniuersall and generall consent and authoritie aswell of the prince as of the nobilitie and commons, that is to say, of the whole head and body of the realme of England) and also of the prince, (which is the head, life and gouernor of this common wealth): there remaineth to shewe, howe this head doeth distribute his authoritie and power to the rest of the members for the gouernment of his realme, & the common wealth of the politike bodie of Englande. And where

as all common wealthes and gouernementes be most occupied, and be most diuerse in the fashion of five thinges: in making of Lawes and ordinaunces, for their owne gouernement: in making of battel & peace, or truce with foraine nations: in prouiding of money for the maintenance of themselves, within themselves, & defence of themselves against their enemies: in choosing and election of the chiefe officers and magistrates: and fiftly in the administration of iustice. The first and thirde we haue shewed is done by the prince in Parliament. The second and fourth by the Prince himselfe. The fift remaineth to be declared.

Of the three maners and formes of trialles
or iudgements in England.

CHAP. 5.

By order and vsage of Englande there is three wayes and maners, whereby absolute and definite iudgement is giuen, by parliament which is the highest and most absolute, by battle and by the great assise.

Triall or iudgement by parliament.

CHAP. 6.

The maner of giuing iudgement by parliament be-
twene priuate and priuate man, or betwene the
Prince and any priuate man, be it in matters crimi-
nall or ciuill, for land or for heritage doth not differ fro
thorder which I haue prescribed, but it proceedeth by
bill thise read in ech house and assented to as I haue
saide before, and at the last day confirmed and allowed
by the Prince. Notwithstanding such bills be seldome receiued,
because that great counsell being enough occupied
with the publike affaires of the realme, will not gladly
intermedle it selfe with priuate quarels & questions.

Triall

Triall of iudgement by battle.

CHAP. 7.

This is at this present not much bled, partly because of long time the Pope and the clergie to whom in times past wee were much subiect, alwaies cryed against it as a thing damnable and vnlawful, and partly because in all common wealthes (as to the tongue) so to the maners, fashions, habites, yea and kindes of trials and iudgements, and to all other thinges that is therein bled, time and space of yeares bringeth a chaunge. But I could not yet learne that it was ever abrogated. So that it remaineth in force, whensoever it be demanded. The maner of it is described in Briton.

The triall by assise or xij. men, & first of the three partes which be necessarie in iudgement.

CHAP. 8.

The two first iudgements be absolute supreme and without appeale, and so is also the iudgement by the great assise. And because our manner of iudgements in England is in many thinges different from the fashion bled either in Fraunce, or in Italie, or in any other place where the Emperors lawes and constitutions (called the ciuill lawes) be put in vse, it will be necessarie here to make a little digression, to the intent, that that which shalbe said hereafter may be better vnderstood. All pursuites and actions (we call them in our English tongue pleas) and in barbarous (but now vsuall) latine *placita*, taking that name *abusue* of the definitiue sentence, which may well be called *placitum* or *arrest*. The French bled the same calling in their language, the sentence of their iudges arreste or arrest: in which wordes notwithstanding after their custome they do not sounde the s, but we call *placitum* the action

¶

not

not the sentence, and *placitare* barbarouslie, or to pleade in english, *agere* or *litigare*. Now in all iudgements necessarily being two parties, the first we call the impleader, suiter, demaunder or demaundaunt and plaintiffe. In criminall causes if he professes to be an accuser, we call him appellant or appellour, and so accusation we call appeale. The other we call the defendand and in criminall causes prisoner, for he cannot aunswere in causes criminall befoze he do render himselfe or be rendered prisoner.

Iudex is of vs called Judge, but our fashon is so diuerse that they which giue the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Judges but the *rij.* men. And the same order aswell is in ciuill matters and pecuniarie, as in matters criminall.

Of pleas or actions.

CHAP. 9.

PLeas or actions criminall be in English called pleas of the crowne, which be all those which tende to take away a mans life or any member of him, for his euill deserting against the prince and common wealth.

And this name is given not without a cause. For taking this for a principle that the life and member of an Englishman is in the power onely of the prince and his lawes, when any of his subiectes is spoiled either of life or member, the prince is endamaged thereby, and hath good cause to aske accompt, how his subiectes should come to that mischiese. And againe for so much as the prince who gouerneth the scepter, and holdeth the crowne of Englande hath this in his care and charge, to see the realme well gouerned, the life, members and possessions of his subiectes kept in peace and assurance; he that by violence shall attempt to breake that

that peace and assuraunce, hath forsaited against the
scepter and crowne of England: and therfore not with-
out a cause in all inquisitions and inditementes, if any
be founde by the iij. men to haue offended in that be-
halfe, straight the prince is saide to be partie, and hee
that shall speake for the prisoner shall be rebuked, as
speaking against the Prince. Neuerthelesse it is neuer
defended, but the prisoner and partie defendand in any
cause may alleadge for him, al the reasons, meanes and
defences that he can, and shall be peaceable heard and
quietlie: But in those pleas & pursutes of the crowne,
procurer or aduocate he gettes none, which in ciuill and
pecuniarie matters (be it for lande, rent, right, or pos-
session, although he plead against the prince himselfe)
is neuer denied.

Sauing in ap-
pels and vpon
a special plea.

Pleas ciuill be either personall or reall, personall as
contractes or for iniuries: reall be either possessorie to
aske, or to keepe the possession, or in rem, which we call
a writte of right. For that which in the ciuill lawe is
called *actio* or *formula*, we call writ in English: so the
Greekes called it worde for worde *ῥησις*, and in our bar-
barous latine we name it *breue*.

Actio is the
parties whole
suite. *breue* is
the kings pre-
cept.

And as the olde Romanes had their actions some *ex
iure ciuili*, and some *ex iure pretorio*, and ordinarily *pre-
tor dabat actiones & formulas actionum*: so in Englande
we retaine still this, and haue some writtes out of the
chauncerie, other out of the common place or the kings
bench.

Of the chiefe Tribunals, benches or courtes of Englande.

CHAP. IO.

In times past (as may appeare to him that shall with
iudgement reade the histories and antiquities of
Englande) the courtes and benches followed the king
and

and his court wheresoeuer he went, especially shortly after the conquest. Which thing being found very cumbersome, painefull and chargeable to the people, it was agreed by parliament, that there should be a standing place where iudgement should be giuen. And it hath long time bene vsed in Westminster hall, which king William Rufus builded for the hall of his owne house. In that hal be ordinarily scene 3. Tribunals or Iudges seates. At the entrie on the right hande, the common place, where ciuill matters are to be pleaded, specially such as touch landes or contractes. At the upper ende of the hall, on the right hande, the kinges bench, where pleas of the crowne haue their place. And on the left hande sitteth the Chauncelloz accompanied with the master of the Roules, who in latine may be called *custos archinorum regis*, and certaine men learned in the ciuill lawe called Masters of the chauncerie, in latine they may be named *Assessores*.

Of the times of pleading called termes, &
of the Chauncellor and chauncerie.

CHAP. II.

Two things may be moued in question here, how all Englande (being so long and so large, and hauing so many shires and prouinces therein) can be answered of iustice in one place, and in 3. benches be they neuer so great? An another (whereas the kinges bench is exercised in criminall causes and in all pleas of the crowne, and the common place in all ciuill causes, reall and personall) what place then hath the chauncerie?

The first question will seeme more maruelous and haue more occasion of doubt, when I shall also tell that the lawe is not open at all times, no not the third part of the yeare. But where all other cities and common wealthes

wealthes had all the yeare pleas, suites, and iudgements. except for certaine holie daies and haruest and vintage, or when for some vrgent cause the lawe was commaunded to be stopped, which is called *Instutum*. Contrarie in ours, it is but fewe times open. That is onely foure times in the yeare which they call termes. After Michaellmas about ten daies, during five or sixe weekes at the least. After Christmas about a moneth, enduring by the space of three weekes. Then from xviij. dayes after Easter by the space of three weekes and odde dayes. Likewise from the sixt or seuenth day after Trinitie Sunday, during two weekes and odde daies. All the rest of the yeare there is no pleading, entring nor pursuing of actions. This small time, and all that but in one place may seeme verie iniurious to the people, who must be faine to suffer much wrong for lacke of Justice and of place and time to pleade: but unto that hereafter I intende to answer more fully, and in the meane while that shall suffice which the wise Cato aunswered to one who moued that the pleading place in Rome might be couered ouer with canuas as their theaters were, to the intent that the plaintifes and defendantes that were there might pleade their matters more at ease, and not be in so much danger of their health by the heate of the sunne striking full and open vpon their heads, which was no small grieve and disease, specially at Rome. Nay (saith Cato) for my part I had rather wish that all the waies to the place of pleading were cast ouer with galthrops, that the feete of such as loue so well pleading, should feelee so much paine of those prickles in going thither as their heads doe of the sunne in tarrying there: he meant that they were but idle, whot heades, busie bodies, and troublesome men in the common wealth that did so nourish pleading: good labourers and quiet men could be content to ende their matters at home by iudgement of their

their neighbours and kinssolke without spending so their money vpon procurers and aduocates whom we call attoznie, counsellors, Sergeants, and generallie men of lawe. Whose he accounted profitable citizens, who attende their honest labour and businesse at home, and not stande waiting and gaping vpon their rolles and processe in the lawe: as for the other by his iudgement, it was no matter what mischiefe they suffered. To the other question of the chancerie, this I answered: That our lawe which is called of vs the common lawe as ye would say *Ius civile*, is and standeth vpon ~~the~~ ^{the} *ius summu*, that is *Ius summu*: and their maximees be taken so straitlie that they may not depart from the tenour of the wordes euen as the olde ciuill lawe was. And therefore as that lacked the helpe of a Prætor (which might *moderari illud ius summu*, giue actions where none was, mitigate the exactnesse and rigour of the lawe witten, giue exceptions, as *metus, doli mali, minoris ætatis, &c.* for remedies, and maintaine alwaies *æquum & bonum*:) the same order and rancke holdeth our chauncerie, and the chauncelloz hath the verie authoritie herein as had the Prætor in the olde ciuill lawe before the time of the Emperours. So he that putteth by his bill in the chauncerie, after that he hath declared the mischiefe wherein he is, hath relæse as in the solemne *forum*. And for so much as in this case he is without remedie in the common lawe, therefore he requireth the chauncelloz according to equitie and reason to prouide for him and to take such order as to good conscience shall appertaine. And the court of the chauncerie is called of the common people the court of conscience, because that the chauncelloz is not strained by rigour or forme of wordes of lawe to iudge but *ex æquo* and *bono*, and according to conscience as I haue saide. And in this court the vsuall and proper forme of pleading of Englande is not vsed, but the forme of pleading

ding by writing, which is vsed in other countries according to the ciuill lawe: and the triall is not by rit. men, but by the examination of witnesse as in other courtes of the ciuill lawe.

Of Iudges in the common Lawe of
England, and the manner of tryall
and pleading there.

CHAP. 12.

The Prince out of the numbers of those who haue bene Counsellors or Sergeants at the Law, which be those who in latin are called *causidici* or *aduocati*, chooseth two of the most approued for learning, age, discretion, and exercise, of whom the one is called chiefe Justice of the Kings bench, or simply chiefe Justice, the other chiefe Justice of the common place, and others to the number of sixe or more, which haue each an ordinarie fee or stipend of the Prince.

These doe sit at such daies as be terme, which may be called *Dies legitimus iuridici* or *fasti*, in their distinct places as I haue said before. There they heare the pleading of all matters which doe come before them: and in ciuill matters where the pleading is for money or land or possession, part by writing, and part by declaration and altercation of the aduocates the one with thother, it doeth so proceede before them till it doe come to the issue, which the latines doe call *statum causa*, I doe not meane *contestationem lris*, but as the Rhetoricians doe call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water helde in a close and darke vessel issueth out, is voided and emptied) and no where else: that stroke well striken is the departing of all the quarells. Issues or *status* in our Lawe be ordinarily two, *facti* and *iuris*.

H 4

Of

Of the two maner of issues.

CHAP. 13.

But sometimes
it is determi-
ned by the
same court
only.

This shoulde
be meant of a
respondes
ouster, when
the opinion is
against him
that taketh an
exception
which is not
peremptorie.
He may deny
it by protesta-
tion.

If the question be of the lawe, that is if both the parties doe agree vpon the fact, and eche doe claime that by lawe he ought to haue it, and will still in that sort maintaine their right, then it is called a demurrer in lawe: where if in the lawe the case seeme to the Judges that litte doubtfull, it is called a checker chamber case, and all the Judges will mee together, and what they shall pronounce to be the lawe, that is helde for right, and the other partie loseth his action or lande for ever. If the Sergeants or Counsellors doe stand vpon anie point in the law which is not so doubtfull, the Judges who be taken for most expert biddes him goe forwarde: and if he hath no other to say but standeth vpon that point of the lawe, that bidding goe forwarde is taken that he loseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or *Iuris*. So is that case where the lawe is not doubtfull according to the matter contained in the declaration, answer, replication, rejoinder or triplication, the Judge out of hande decideth it. And it is the maner that eche partie must agree to the other still in y fact which he cannot denie. For if he once come to denie any deede as not done, not his writing, that the man by whome the aduersarie claimeth was not the aduersaries auncestor, or the euidence which his aduersarie bringeth is not true, or that his gift was former, or any such like exception which is baileable to abate the action or barre the partie: and the other ioyneeth in the affirmatiue and will auerre and proue the same, this is called the issue, and immediately all question of the lawe ceaseth as agreed by both the parties

parties, that there is no question in the lawe. Then as that issue *facti* is founde by the xij men of whom we shall speake hereafter, so the one partie or other loseth his cause and action: so that contrarie to the maner of the ciuill lawe where first the fact is examined by witnesses, indices, formentes and such like probations to finde out the truth thereof, and that done the aduocats doe dispute of the lawe to make of it what they can: saying, *ex facto ius oritur*: here the Sergeantes or counselers before the Judges doe in passing forwarde with their pleading determine and agree vpon the lawe, and for the most part and in manner all actions as well criminal as ciuill, come to the issue and state of some fact which is denied of the one partie, and auerred of the other: which fact being tried by the xij men as they find, so the action is wonne or lost. And if a man haue many peremptorie exceptions (peremptorie exceptions I call onely those which can make the state and issue) because the xij men be commonly rude and ignorant, the partie shall be compelled to chuse one exception whereupon to found his issue, which chosen if he faile in that by the verdict of xij men, he loseth his action and cause, and the rest can serue him for nothing.

Having scene both in France and other places manie deuises, edictes and ordinaunces howe to abridge proces and to finde howe that long suites in law might be made shorter: I haue not perceiued nor reade as yet so wise, so iust, and so well deuised a meane found out as this by any man among vs in Europe.

Trueth it is that where this fashion hath not bene vsed and to them to whom it is newe, it will not be so easily vnderstood, and therefore they may peradventure be of contrarie iudgement: but the more they doe weigh and consider it, the more reasonable they shall finde it.

Howe the issue, question or *status iuris* is decided, I
I haue

have tolde : now I will shewe howe it is tryed when it doth come to the question, state or issue of the dede or fact. And first I must speake moze largely of the manner of proceeding in the proceste, and of such persons as be necessarie for the execution thereof.

Of the sherife of the shire, and of the
court of exchequer.

CHAP. 14.

The Romans had to execute the commaundementes of the magistrates *Lictores, viatores, accensos*. The civil lawe sith that time hath other names, termes, and officers. The execution of the commaundementes of the magistrates in England is ordinarily done by the sherifes. The sherife (which is as much to say as the Reeve or Wayly of the shire) is properly word for word *Questor provincie*: it is he which gathereth tythe and accounteth for the profittes of the shire, that come to the exchequer. The exchequer (which is *fiscus principis*, or *erarium publicum*, and I cannot tell in what language it is called *Scaccarium*, some thinks that it was first called *statarium*, because that there was the stable place to account for the revenues of the crowne, aswell that which came of the patrimony which we call the demesnes : as that which cometh of other incident acquisitions be they rentes, customes, tenthes, quinziesmes, tares, subsidies, wheresoeuer the Prince or his court be according to the time and occasion) was a place stable, continual and appointed for to reckon and account. The hearers of the account (who in latin may be called *tribuni erarii*) have auditors vnder them which the Latines doe call *Rationales* : but they are the chiefe for the accounts of the Prince, and may be called *Iuridicarationales*, in English we call them Barons of the exchequer, whereof

Scats in ancient Saxon is that which we by a borrowed terme call treasure, whereof is deriued *Scaccariū* signifying a court dealing with the kinges treasure or revenues, & also escaetor that is an officer which imployeth the kinges profit.

whereof is one who is called the chiefe Baron, as *Tribunus* or *Iuridicus rationalis primus* or *princeps*. The chiefe of all is called high treasurer of Englande, as you would say in latin *Supremus erarij anglici quæstor*, or *Tribunus erarius maximus*. In this court be heard *Quadruplatores* (which we call promoters) which be those that in popular and penall action be *delatores*, having thereby part of the profit by the lawe assigned. In this court if anie question be, it is determined after the order of the common lawe of Englande by the xij men as I haue saide: and all customers which were in latine called *publicarij* in Greeke *τελωνιται*, do account in this office. The Sherife of the shire is called in our common latine *Viccomes*, as one would say *vicarius comitis* or *procomes*, doing that seruice to attende vpon the execution of the commaundementes of the Tribunalles or Judges which the Earle or countie should doe, which Earle or Countey for the most part was attending vpon the Prince in the warres or other wise about the Prince as the worde beareth, *comes principis*: whereby it may appeare that the chiefe office of the Countie or Earle was to see the kinges Justice to haue course and to be well executed in the shire or Countie, and the Princes reuenues well answered and brought in *erarium principis*, which is called of vs the treasurie.

If any fines or amerçiements, which in latin be called *multæ*, be leuied in anie of the saide courtes vpon any man, or any arrerages of accountes by the latines called *reliqua*, of such thinges as is of customes, taxes, subsidies or any other such occasions, the same Sherife of the shire doth gather and is respondent therefore in the exchequer. As for other ordinarie rentes of patrimoniall landes and most commonly for the taxes, customes, and subsidies, there be particular receiuers and collectors which doe answere it into the exchequer. The Sherife hath vnder him an vnder Sherife at his charge

charge and appointment learned somewhat in the law, especially if he be not learned himselfe, & diuers bailifes which be called errantes, whom he maketh at his pleasure, who can knowe ech lande and person in the shyre, and their abilitie to goe vppon enquestes, either to distreine or to summon him to appeare whom the sherife shall appoint, and for this cause to the sherifes as to the minister most proper of the lawe the writtes be directed.

When anie thing commeth to an issue of the dede or fact, there is a writ or writing directed to the sherife of the shire where the lande is, whereupon the controuersie is, or where the man dwelleth of whome the money is demaunded, which writ is called *venire factas*. Then after the same effect an *alias*, *pluries* or *distingas* according to the nature of the action to the returne of the sherife. And if for anie disobedience or not coming and appearing there be a fine (which the latins doe call *Multa*) set vpon any iurozs head, the sherife is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therefore to the exchequer. The sherife also is readie by himselfe or by his vnder sherife to serue aswell the Iustices of peace in their quarter sessions as the Iustices called *Itinerantes* in their great assises, when they come into the shyre, which is twise in the yeare, to dispatch and boide actions criminall and ciuil depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners committed to the prison which we call the gaole, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commaundementes according to the lawe as the Judges do ordaine, and this is ynough for the sherife.

Of

Of the xij. men.

CHAP. 17.

Of what manner and order of men in the common welth the xij men be I haue alreadie declared. The Sherife alwaies warneth xiiij to appeare, least peradventure any might be sicke or haue a iust cause of absence: and if there be not enow to make an enquest, the absentes be amerced. For although they be called xij men as a man would say *duodecim viri*, yet if they be xvi, xx or the whole number of xiiij, that is no matter, xij they must be at the least to make an enquest or as some call it a quest. An enquest or quest is called this lawefull kinde of triall by xij men. In actions ciuill which is either of contrades or for lande or possession when so many of those which be warned appeare at the call as be able to make an enquest, which as I said before be no lesse than xii, either part when they be come taketh their chalenges against so many of them as they will, which be that he may not spende so much lande a yeare, he is alied, feed, or seruant to his aduerse partie, he is hisemie &c. And two of the whole number doe trie and allowe or disallowe the rest. If after exceptions there be so many reiected that there is not a full enquest, in some cases that day is lost, in some the enquest is filled *ex circumstantibus*: when the quest is full, they be swozne to declare the trueth of that issue according to the euidence and their conscience. Then the Sergeantes of either side declare the issue, and each for his client saith as much as he can. Euidences of witnesses be shewed, witnesses be swozne, & heard before them, not after the fashion of the ciuill law but openly, that not only the xii, but the Judges, the parties and as many as be present may heare what ech witnesse doeth say:

That is not
order but a-
buse.

Courtesie and
not ductie.

say: The aduerse partie or his aduocates which wee call counsellors and sergeants interrogateth sometime the witnesses, and diueth them out of countenance. Although this may seeme strange to our Ciuilians nowe, yet who readeth Cicero and Quintillian well shall see that there was no other order and maner of examining witnesses or deposing among the Romanes in their time. When it is thought that it is enough pleaded before them, and the witnesses haue saide what they can, one of the Judges with a bryefe and pithy recapitulation reciteth to the iiii in summe the argumentes of the sergeants of either side, that which the witnesses haue declared, and the chiefe pointes of the euidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giueth it them in writing, deliuering to them the euidence which is shewed on either part, if any be, (euidence here is called writings of contractes autenticall after the manner of England, that is to say, written, sealed and deliuered) and bidde them goe together. Then there is a baylife charged with them to keepe them in a chamber not farre off without bread, drinke, light, or fire untill they be agreed, that is, till they all agree vpon one verdit concerning the same issue, and vpon one among them who shall speake for them all when they be agreed: for it goeth not by the most part, but each man must agree. They returne and in so fewe wordes as may be they giue their determination: fewe I call vi or vii or viii wordes at the most (for commonly the issue is brought so narrow, that such number of wordes may be ynough to affirme or to denie it) which done they are dismissed to goe whither they will. The partie with whom they haue giuen their sentence, giueth the enquest their dinner that day most commonly, and this is all that they haue for their labour, notwithstanding that they come some xx some xxx or xl miles or moze, to the place where

where they gine their verdite all, the rest is of their owne charge. And necessarilie all the whole rii must be of the shire and iiii of them of the hundred where the lande lyeth which is in controuersie, or where the partie dwelleth who is the defendant.

Of parties of Shires called hundreds,
lathes, rapes, wapentakes.

CHAP. 16.

A hundred, or lath, rape, or wapentake be called of the diuisions or partes of shires in diuers countreys diuersly named after the manner and language of each countrey. For the shires be diuided some into x. xii. xiii. xvi. xx. or xxx. hundreds, moze or lesse, either that they were at the first C. towne & villages in eche hundred: and although now they be but xvi. xx. xxx. xl. l. lx. moze or lesse, yet it is still called an hundred, or else there were but so many at the first as be now, or a few moze or lesse, and they did finde the king to his warres an hundred able men. Lath, and rape I take to be names of seruice, for that so many townes in olde time, and in the first pouertie of the Realme did meete together in one day to carrie the Lordes cozne into his barne, which is called in olde English a Lath. Or that they mette at commaundement of the Lorde to reape his cozne.

Wapentake I suppose came of the Danes or per-
aduenture of the Saxons. For that so manie townes came by their orders then, to one place, where was taken a mousier of their armour and weapons, in which place from them that could not finde sufficient pledges for their good abearing, their weapons were taken away: weapen or wapen in olde English doe signifie all armes offensive, as sword, dagger, speare, launce, bill, bowes,

Or as some say, because in such places the subiects had their armour appointed them, and there did take their weapons.

bowes, arrowes.

Of the place where the musters were taken or where the saide seruices were done, the hundzeds, Lathes, Rapes, and wapentakes had and haue yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime now in places whereof the hundzed hath the name, no mention nor memozie of a towne remaineth, such mutation time bringeth with it of all thinges. A hundzed hath one or two high Constables, who hath some authoritie ouer all the lower, and particular Constables. Those high Constables bee made by the Iustices of the peace of the shire, and each hundzed hath his baylife, who is made by the Lozde if any hath that libertie, or else by the sherrife of the shire for the time being.

Of the court Baron.

CHAP. 17.

It may appeare strange that of xxxvi shires, whereof each shire is diuided into diuerse hundzeds, each hundzed containing diuerse parishes, all pleading should be but in one place, that is in Westminster hall, and that but in certaine times of the yeare, making little more than one quarter of the yeare in the whole. And one would thinke y there should be much lacke of Justice & right, and much wrong taken without redresse. But it is not so: The people being accustomed to liue in such an equalitie of Justice, & that in such sort that y rich hath no more aduantage therein than the poore, the proces, and proceedinges to the iudgement being so short, and iudgementes also being peremptorie and without appellation: Yet to helpe for small matters, where no great summe is in question there are other courtes.

courtes. In euerie shire from thre wêkes to thre wêkes the sherife for small thinges not passing xl. s. and in certaine hundreds and liberties the bailie likewise from thre wêkes to thre wêkes holdeth plea. And whosoever is possessor and owner of a mannor, may holde from thre wêkes to thre wêkes, or at his pleasure of his tennantes and amongst his tennantes a court called a court Baron. And there his tennantes being sworn make a Jurie which is not called the enquest, but the homage. These principallie doe enquire of the copie holders, and other free holders that be dead sith the last court, and bring in their heires, and next successours, and likewise of incroachment or intrusion of anie of the tennantes against the Lord, or among themselves. They make orders and lawes amongst themselves, the paine of them if they be after broken, commeth to the Lord. And if anie small matter be in controuersie, it is put to them, and commonly they doe ende it. But these courtes doe serue rather for men that can be content to be ordered by their neighbours, and which loue their quiet and profit in their husbandrie, more than to be busie in the lawe. For whether partie soever will, may procure a writte out of the higher court to remove the plea to Westminster.

In cities and other great townes there be diuerse liberties to holde plea for a bigger summe, which doe determine as well as the common lawe, and after the same manner, and yet for them that will, it may be removed to Westminster hall.

King Henrie the eight ordained first a president, Counsellors and Judges, one for the marches of Wales, at Ludlowe, or else where; an other for the north partes of Englande at Yorke, where be manie causes determined. These two are as be Parliaments in Fraunce. But yet if there be anie matters of great consequence, the partie may moue it at the first, or re-

R

moue

move it afterwarde to Westminster hall, and to the ordinarie Judges of the Realme, or to the Chaunceller, as the matter is.

These two courtes doe heare matters befoze them, part after the common lawe of Englande, and part after the fashion of the chauncerie.

Of the Leete or lawe day.

CHAP. 18.

Leete or lawe day is not incident to euerie manno, but to those onely which by speciall graunt, or long prescription haue such libertie. This was as it may appeare first a speciall trust and confidence and commission giuen to a fewe put in trust by the Prince, as is now to the Iustices of peace, to see men swozne to the Prince, to take pledges and suerties in that maner of one for an other to answer for obedience and truth, to enquire of priuie conspiracies, fraies, murders, and bloudsheddes, and to this was added the ouersight of bread and ale, and other measures. Many times they that be out of the homage and court Baron of that manno and Lordship, be neuerthelesse astreined and answerable to come to the Leete. This Leete is ordinarily kept but twice in the yeare, and that at termes and times prescribed.

The Leete or Lawe day is all one, and betokeneth worde for worde, *legittimum* or *iuridicum diem*. Lawe the olde Barons called lant or lag, and so by corrupti- on and chaunging of language from Lant to Leete, vnderstanding day. They which keepe our full english terme, call it yet lawe day.

OF

Of the proceedinges of causes criminal, and first of the Iustices of the Peace.

CHAP. 19.

BEfore the maner of proceeding in causes criminal can be well understood, it will be necessaris to speake of thre persons, the Iustices of peace, the Coroners, and the Constables. The Iustices of peace be men elected out of the nobilitie, higher and lower, that is the Dukes, Marquises, Barons, Knightes, Esquiers, and Gentlemen, and of such as be learned in the lawes, such and in such number as the Prince shall thinke mete, and in whome for wisdom and discretion he putteth his trust, inhabitantes within the countie: sanning that some of the high nobilitie and chiefe magistrates for honours sake are put in all, or in the most of the commissions of all the shires of England. These haue no time of their rule limited but by commission from the Prince alterable at pleasure.

At the first they were but iij, after viij, now they come commonly to xij or xl in euerie shire, either by increase of riches, learning, or actiuitie in policie and gouernement. So manie more beeing founde, which haue either will, or power, or both, are not too manie to handle the affaires of the common wealth in this behalfe. Of these in the same commission be certaine named, which be called of the *Quorum*, in whome is especiall trust reposed, that where the commission is giuen to xl or xij, and so at the last it cometh to iij or thre, it is necessarie for the perfo:maunce of many affaires to haue likewise diuerse of the *Quorum*. The wordes of the commission be such, *Quorum vos A B. C D. E F. vnum esse volumus.*

The Iustices of the peace be those in whome at this
R 2
time

time for the repressing of robbers, thēues, and vaga-
bunds, of pꝛiue complots and conspiracies, of riotēs,
and violences, and all other misdemeanoꝝ in the com-
mon wealth, the Prince putteth his special trust. Each
of them hath authoritie vpon complaint to him made of
any theft, robberie, manslaughter, murder, violence,
complots, riottes, vnlawefull games, oꝝ any such di-
sturbance of the peace, and quiet of the Realme, to com-
mit the persons whom hee supposeth offendoꝝ, to the
pꝛison, and to charge the Constable oꝝ Sherife to bring
them thither, the gaoler to receaue them and keepe
them till he and his fellowes doe meete. A fewe lines
signed with his hande is ynough for that purpose: these
doe meete foure times in the yeare, that is, in each quar-
ter once, to enquire of all the misdemeanoꝝ aforesaid:
at which daies the Sherife, oꝝ his vnder Sherife with his
baylifes be there to attende vpon him, who must pre-
pare against that time foure enquestes of xiiiiij yea-
men a pēce of diuerse hundꝛedes in the shire, and be-
sides one which is called the great enquest out of the
bodie of the shire mingled with all. These fine enquestes
are swoꝛne befoꝛe them to enquire of all heretiques,
traitoꝝ, theftes, murders, manslaughteres, rapes,
false moniers, extoꝛtioners, riottes, routes, forcible
entries, vnlawefull games, and all such thinges as be
contrarie to the peace and good order of the Realme,
and to bring in their verdict. If they among themselues
vpon their owne knowledge doe finde any culpable,
they cause one of the clarkes to make the bill. And if
any be there to complaine vpon any man for these
faultes, he putteth in his bil, which bil is presented first
to the Iustices sitting vpon the bench, to see if it be con-
ceined in forme of lawe, which done the complainant
doth deliuer it to one of these enquestes, & after the com-
plainant is swoꝛne, he declareth to the what he can, for
e pꝛoofe of it. And if they find it true they do nothing but
write

This is not al-
waies and in al
places obser-
ued, but onely
concerning
the graunt en-
quest.

write on the backside of it, *hills vera*, as ye would say, *scriptum verum*: or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted.

If they do not finde it true, they write on the backside *ignoramus*, & so deliuer it to the Iustices of whome it is rent into peeces immediatly: he that is indicted is accounted a lawefull prisoner, and after that time looked moze strenghtly vnto. For this inditement is no conuiction: and if he be indicted, and be not alreadie in prison, the sherife if he can finde him, bringeth him into prison: if he cannot finde him, proces is made out against him, to render himselfe prisoner, or else hee shalbe outlawed. So he is called thre times in diuerse countie daies to render himselfe to the Lawe. The fourth is called the exigent, by which he is outlawed not rendring himselfe, as ye would say: *exactus or actus in exilium*. The outlawe loseth all his goods to the King for his disobedience. But if after he will render himselfe to answer to the lawe, and shewe some reasonable cause of his absence, manie times of grace his outlawerie is pardoned. These meetings of the Iustices of peace soure times in the yeare, be called quarter sessions or sessions of enquire, because that nothing is there determined touching the malefactors, but onely the custodie of them: and this kinde of proceeding which is by inquisition of the xij men within themselves, and their owne consciences, or by denunciation of him that putteth in his bill to the xij, is called at the kings suite, and the king is reckoned the one partie, and the prisoner the other. The Iustices of the peace doe meete also at other times by commandement of the Prince vpon suspition of warre, to take order for the safetie of the shire, sometimes to take musters of harnesse and able men, and sometime to take orders for the excessiue wages of seruants and labourers, for excessse of apparell, for vnlawefull games, for con-

The vse of *captias* and *exigent* vpon inditementes is otherwise.

They are put to fines.

uenticles and euill orders in alehouses, and tauerneſ, for puniſhment of idle and vagabund perſons, and generally as I haue ſaide, for the good gouernement of the ſhire, the prince putteth his confidence in them. And commonly every yeare, or each ſeconde yeare in the beginning of ſummer or afterwardeſ, (for in the warme time the people for the moſt part be moze vn- rule) even in the calme time of peace, the prince with his Counſell choſeth out certaine articles out of pe- nall Lawes already made for to reſſeſſe the pride and euill rule of the popular, and ſendeth them downe to the Juſtices, willing them to looke vpon thoſe pointſ, and after they haue mette together and conſulted among themſelues, howe to order that matter moſt wiſely and circumſpectly, whereby the people might be kept in good order and obedience after the lawe, they diuide themſelues by thre or ſoure: and ſo each in his quarter taketh order for the execution of the ſaide arti- cles. And then within certaine ſpace they make againe and certiſie the prince or his priue counſell how they doe finde the ſhire in rule & order touching thoſe pointſ and all other diſorders. There was neuer in any com- mon wealth diuiſed a moze wiſe, a moze dulce and gen- tle, nor a moze certaine way to rule the people, where- by they are kept alwaies as it were in a bridle of good order, & ſoner looked vnto that they ſhould not offend, than puniſhed when they haue offended. For ſeeing the chiefe amongſt them, their rulers to haue this ſpe- ciall charge and doe call vpon it, and if occaſion ſo doe preſent, one or two preſently either puniſhed or ſent to priſon for diſobedience to thoſe olde orders & lawes, they take a feare within themſelues, they amende and doe promiſe moze amendment. So that it is as a netwe forbulhing of the god lawes of the realme, and a con- tinuall reſſeſſing of diſorders, which doe naturally reſt among men. But as the inuention of this, and the

the vse and erecution thereof is the most benefite that can be deuised for the common wealth of Englande: So when it shalbe misused, dissembled with, or be contemned, & be done *pro forma tantum*, and as they terme it in Fraunce *par mainere d'acquit* onely, it will be the present ruine (though not at the first apperceiued) of the common wealth. Of which the fault may be as well in the commaunders for not making good choice what and howe they commaunde, as in the commaunded, for not executing that which is commaunded.

Of hue and crie and recognisaunce

taking vpon them that may
giue euidence.

CHAP. 20.

By the olde lawe of Englande if any theft, or robberie be done, if he that is robbed, or he that seeth or perceiueth that any man is robbed doe leue hue & crie, that is to say, doe call and crie for aide, and say that a theft or robberie is done contrarie to the Princes peace and assurance: The Constable of the village to whom he doth come, and so make that crie, ought to raise the parish to aide him and seeke the thiefe, and if the thiefe be not founde in that parish, to goe to the next and raise that Constable, and so still by the Constables and them of the parish one after an other. This hue and crie from parish to parish is caried, till the thiefe or robber be founde. That parish which doeth not his dutie, but letteth by their negligence the thiefe to depart, doeth not onely paie a fine to the king, but must repaie to the partie robbed his dammages. So that euery English man is a sergiant to take the thiefe, and who sheweth himselke negligent therein, doth not onely incurre euill opinion therfore, but hardly shall escape

punishment: what is done with the theefe or robber when he is taken, I shall shewe you hereafter. The same manner is followed if anie man be slaine, for straight the murthurer is pursued of euerie man till he be taken. So soone as any is brought to the Iustices of peace by this hue or crie, by the Constable or anie other who doth pursue the malefactor, he doeth examine the malefactor, and writeth the examination and his confession: then he doth binde the partie that is robbed or him that sueth, and the Constable, and so manie as can giue euidence against the malefactor to be at the next sessions of gaole deliuerie to giue their euidence for the Quene. He bindeth them in recognisance of r. l. xx l. xxx l. xl l. or C. l. according to his discretion, and the qualitie of the crime: which certified vnder his hande, is leuied vpon the recognizance if they sayle of being there.

Of the Coroner.

CHAP. 21.

But if anie man, woman, or child, be violently slaine, the murthurer not knowen, no man ought or dare burie the bodie before the Coroner hath seene it. The Coroner is one chosen by the Prince of the meaner sort of gentlemen, and for the most part a man seene in the lawes of the Realme to execute that office. And if the person slaine, (slaine I cal here, whosoever he be, man, woman, or childe that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner doe come (which for the most part men dare not doe) he doeth cause the bodie to be taken vp againe, and to be searched, and
vpon

Upon the sight of the bodie so violently come to his death, he doth empanell an enquest of xij men or mo, of those which come next by, be they strangers or inhabitants, which upon their othes, and by the sight or viewe of the bodie, and by such informations as they can take, must search holue the person slaine came to his death, and by whome as the doer or causer thereof. These are not inclosed into a streit place, (as I tolde before of other enquestes) but are suffered to goe at large, and take a day, sometime after xx or xxx dayes, more or lesse, as the fact is more evident, or more kept close, to giue their euidence, at which day they must appeare there againe before the sayde Coroner to giue their verdict. So sometime the person slaine himselfe, sometime the brother, the husbände, the wife, the sister, some of acquaintance or stranger, such as God wil haue reueiled, be taken. For whosoever they doe finde as guiltie of the murder, he is streight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as ye shall see hereafter.

The empanelling of this enquest, and the viewe of the bodie, and the giuing of the verdict, is commonly in the streete in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of euerie subiect by violence is accounted to touch the crowne of the Prince, and to be a detriment vnto it, the prince accounting that his strength, power, and crowne doth stande and consist in the force of his people, and the maintainaunce of them in securitie and peace.

L

Of

Of the Constables.

CHAP. 22.

These men are called in the elder booke of our lawes of the Realme *custodes pacis*, and were at the first in greater reputation than they be now. It may appeare that there was a credit giue vnto them not altogether vnlike to that which is now giuen to the Iustices of peace. To this day if any affraie chaunce to be made, the Constables ought and will charge them that be at debate to keepe the Princes peace: and whosoever refuseth to obey the Constable therein, all the people will set streight vpon him, and by force make him to render himselfe to be ordered. Likewise if any be suspected of theft, or receiuing, or of murther, or of manslaughter, the Constable may take such persons, yea enter into any mans house with sufficient power to search for such men till he finde them: and if hee see cause keepe the suspected persons in the stocks, or custodie, till he bring them before a Iustice of the peace to be examined. But for so much as euerie litle village hath commonly two Constables, and many times artificers, labourers and men of small abilitie be chosen vnto that office, who haue no great experience, nor knowledge, nor authoritie, the Constables at this present (although this they may doe vpon their owne authoritie) yet they seeme rather to be as it were the executors of the commaundement of the Iustices of peace. For the Iustice of peace as soone as he vnderstandeth by complaint that any man hath stolen, robbed, slaine, or any seruant or labourer without licence hath departed out of his maisters seruice, or any that lieth idle and suspectly, knowing once in what parish he is, he writeth to the Constable of the parish, commanding him

One or two
Constables,
headboroughes
or tithingmen.

him in the Princes name to bring that man before him: the Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, hee committeth him to the same Constable to conuey him further to the Princes gaole, where the partie must lie till the Justices of peace doe meete either at their quarter sessions, or at their gaole deliuerie, and that the lawe hath either condemned or acquitted him. These Constables are called in some places headborowes, in some places tithingmen, and be like to them, who are called Consuls in manie townes and villages in Fraunce. The Constables are commonlie made and sworne, at the Leetes of the Lordes, chosen thereto by the homage, and they keepe that office sometime ij. iij or iiij yeare, more or lesse, as the parish doth agree. What headborow doth betoken it is easily knowen, our language doth declare him as the head or chiefe of the borowe or village: likewise tithing man is the chiefe of y tithing. Constable seemeth to me to come of our olde English word Kinning, which is Kinnyngstable, as ye would say a man established by the king, for such thinges as appertaineth to pleas of the crowne & conseruation of the Kings peace, & as I saide at the first were in some more reputation, approaching to that authoritie which the Justices of peace nowe doe holde.

Kinningstable
is Regia virgula, the Kings
rod or wand,
signifying the
Kinges power
or authoritie,
a representation
whereof
is the vse of
maces & white
staues by officers
in the common
wealth.

Kinningstable
is *Regia virgula*, the Kings
rod or wand,
signifying the
Kings power
or authoritie,
a representa-
tion whereof
is the vse of
maces & white
staues by offi-
cers in the cō-
mon wealth.

Of the sessions of gaole deliuerie, and
the definitiue proceedings in
causes criminall.

СНАР. 23.

HOwe thēues and murtherers and other malefa-
ctors against the crowne and the peace are taken &
brought into holde to answer to iustice , partly by hue
℥ 2 and

and crie, partly by information, and partly by the diligence of the Iustices of peace and the Constables, and holwe that at the quarter sessions they be indicted, or else by the Cozoners yet haue hearde befoze. Enditement (as yee may perceiue by that which is also gone befoze) is but a former iudgement of ris men which be called enquirers, and no definitive sentence, but that which in latin is called *prauidicium*, it doeth but shewe what opinion the countrey hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be endicted, yet if when he come to the arainement, there be no man to pursue further, nor no euidence of witness or other triall and *indices* against him, he is without difficultie acquitted. No man that is once indicted can be deliuered without arainement. For as ris haue giuen a preiudice against him, so ris againe must acquite or condemne him. But if the prisoner be not indicted, but sent to prison vpon some suspicion or suspicious behaviour, and none doe pursue him to the enditement, first being proclaimed thus, A. B. prisoner standeth here at the barre, if anie man can say anie thing against him, let him now speake, for the prisoner standeth at his deliuerance: if no man doe then come, hee is deliuered without any further proces or trouble, agreeing first with the gaoler for his fees. And these be called acquitted by proclamation. Twise euerie yeare the one is commonly in lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in summer, the Prince doth sende downe into euerie shire of Englande certaine of his Iudges of Westminster hall, and some Seargeantes at the lawe with commission to heare and determine iointly with the Iustices of the peace all matters criminall and all prisoners which be in the gaoles. These Iudges doe goe from shire to shire till they haue done their circuit of so manie

nie shires as be appointed to them for that yeare : at the ende of the terme going before their circuit it is written and set vp in Westminster hall on what day and in what place they will be . That day there meeteth all the Iustices of the peace of that shire , the Sherife of that shire , who for that time beareth their charges , and asketh after allowance for it in the Exchequer . The Sherife hath readie for criminall causes (as I writt before at the sessions of inquire) iij. v. or vi. enquestes readie warned to appeare that day to serue the Prince , and so manie more as he is commaunded to haue readie to go in ciuill matters betwixt priuate men , which they call *Nisi prius* , because that worde is in the writ .

In the towne house , or in some open or common place , there is a tribunall or place of iudgement made aloft vpon the highest bench , there sitteth the two Iudges which be sent downe in Commission in the middelt . Next them on eche side , sitteth the Iustices of peace , according to their estate and degree . On a lower bench before them , the rest of the Iustices of the peace , and some other gentlemen or their clarkes . Before these Iudges and Iustices , there is a table set beneath , at which sitteth the *Custos rotulorum* , or keeper of writtes , the Sherif , the vnder-shirif , and such clarkes as doe write . At the ende of that table , there is a barre made with a space for thenquestes and xij men to come in when they are called , behinde that space another barre , and there stand the prisoners which be brought thither by the gaoler all chained one to another . When the cryer crieth , and commaundeth silence . One of the Iudges briefly telleth the cause of their coming , & giueth a good lesson to the people . When the prisoners are called for by name , and bidden to aunswere to their names . And when the *Custos rotulorum* hath brought forth their enditements , the Iudges doe name one or

two or three of the prisoners that are endicted, whom they will haue arraigned. There the Clarke speaketh first to one of the prisoners: A. B. come to the barre, hold vp thy hand. The Clarke goeth on: A. B. thou by the name of A. B. of such a towne, in such a countie, art endicted, that such a day, in such a place, thou hast stolen with force and armes an horse, which was such ones, of such a colour, to such a balow, and carried him away feloniously, & contrarie to the peace of our soueraigne Ladie the Quene. What sayest thou to it, art thou guiltie or not guiltie? If he will not aunswere, or not aunswere directly guiltie or not guiltie, after he hath bene once or twice so interrogated, he is iudged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruellest deathes that may be: he is laide vpon a table, and another vpon him, and so much weight of stones or lead laide vpon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong & stout hearted man doth chuse, for being not condemned of felonie, his bloud is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be foreiudged, that is condemned for a felon by the lawe. If he confesse the enditement to be true, then when he is arraigned, no riemen goeth vpon him, there resteth but the Iudges sentence, of the paine of death.

If he pleade not guiltie, as commonly all theues, robbers, & murderers doe, though they haue confessed the fact before the Iustice of the peace that examined them, though they be taken with the maner, which in Latine they call *in flagranti crimine*, howsoeuer it be, if he pleade there not guiltie, the Clarke asketh him howe he will be tryed, and telleth him he must saie, by God and the Countie, for these be the wordes for mall
of

of this triall after Inditement, and where the Prince is partie: if the prisoner doe say so, I will be tryed by God and the Countrey, then the Clarke replyeth, Thou hast bene indicted of such a crime, &c. Thou hast pleaded not guiltie: being asked howe thou wilt be tryed, thou hast answered by God and by the Countrey. Doe these honest men that be come here, be in the place and stead of the Countrey: and if thou hast any thing to say to any of them, looke vpon them well and nowe speake, for thou standest vpon thy life and death. Then calleth he in the first Iuroz. B. C. come to the booke, and so giueth him an othe to goe vprightlie betwixt the Prince and the prisoner, &c. If the prisoner objecteth nothing against him, he calleth an other, and so an other, till there be xii. or aboue: and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are vnknown to him, nor they know not him, as I said being substantial yeomen, that dwell about the place, or at the least in the hundred, or nere where the felonie is supposed to be committed, men acquainted with daily labour and trauaile, and not with such idle persons, as be readie to doe such mischiefes.

When the enquest is full, and the prisoner hath objected nothing against them, as in deede seldome he doeth, for the cause aboue rehearsed: The Clarke saith to the cryer, countes, (in French as ye would say reken) and so nameth all those that be on the quest. The crier at euerie name cryeth aloude, one, then ii. iii. iiii. and so till the number be full of xii. or moze, & then saith good men and true: and then saith aloude: If any can giue euidence, or can say any thing against the prisoner, let him come nowe, for he standeth vpon his deliuerance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Iustices of peace. He if he be there deliuereth by the

examination which he tooke of him, and vnderneath the names of those whom he hath bound to giue euidence, although the malefactor hath confessed the crime to the Iustice of the peace, and that appeare by his hande and confirmation, the iij. men will acquite the prisoner, but they which should giue euidence pay their recognizance. Howbeit this doth seldome chaunce, except it be in small matters, and where the Iustice of peace, who sent the prisoner to the gaole, is away. If they which be bound to giue euidence come in, first is read the examination, which the Iustice of peace doeth giue in: then is heard (if he be there) the man robbed what he can say, being first swozne to say truth, and after the Constable, and as many as were at the apprehension of the malefactor: and so many as can say any thing being swozne one after an other to say truth. These be set in such a place as they may see 5 Judges and the Iustices, the enquest and the prisoner, & heare them, and be heard of them all. The Judge first after they be swozne, asketh first the partie robbed, if he knowe the prisoner, and biddeth him loke vpon him: he saith yea, the prisoner sometime saith nay. The partie pursuiuant giueth good ensignes *verbi gratia*, I knowe thee well ynough, thou robbedst me in such a place, thou beatest mee, thou tookest my horse from mee, and my purse, thou hadst then such a coate and such a man in thy companie: the these will say no, and so they stand a while in altercation, then he telleth al that he can say: after him likewise all those who were at the apprehension of the prisoner, or who can giue any *indices* or tokens which we call in our language euidence against the malefactor. When the Judge hath heard them say ynough, he asketh if they can say any moze: if they say no, then he turneth his speche to the enquest. Good men (saith he) ye of the enquest, ye haue heard what these men say against the prisoner,

prisoner, you haue also heard what the prisoner can say for himselfe, haue an eye to your othe, and to your duetie, & doe that which God shall put in your mindes to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of ij. or iij. prisoners: For if they should be charged with more, the inquest will say, my Lord, we pray you charge vs with no more, it is y^e enough for our memorie. Many times they are charged but with one or two. At their departing, they haue in writing nothing giuen them, but the enditement, the Clarke repeating to them the effect of it, and shewing more, that if they finde him guiltie, they shall enquire what goods, landes, and tenementes, the saide person had at the time of the felonie committed: and if they finde any, they shall bring it in: if no, they shall say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a bailife to waite vpon them, and to see that no man doe speake with them, and that they haue neither bread, drinke, meate, nor fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or would heare againe some of them that giue euidence to interrogate them more at full, or if any that can giue euidence come late: it is permitted that anie that is sworn to say the trueth, may be interrogated of them to enforme their consciences. This is to be vnderstood although it will seeme strange to all nations that doe vse the ciuill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is done openlie in the presence of the Judges, the Iustices, the enquest, the prisoner, and so many as will or can come so neare as to heare it, and all depositions and witnessses giuen aloud, that all men may heare from the mouth of the

¶

depo.

depositors and witnesses what is saide. As of this, so is it of all other prisoners after the same sort. By that time that the enquestes for the prisoners be dispatched, it is commonly dinner time, the Judges and Justices goe to dinner, and after dinner returne to the same place: if the enquest be not readie for the prisoners, they goe to some other enquests of *nisi prius*, which be ciuill matters and priuate to drue out the time. The enquestes haue no soner agreed vpon their charge one way or other, but they tell the Bailife, and pray to bee heard, and considering that they be themselves all this while as prisoners as I saide before, it is no maruell, though they make expedition. The prisoners be sent for againe to the barre, the enquest which hath agreed, is called for each one of the Iurie by his name, to which he answereth. Then the clarke asketh if they be agreed, and who shall speake for them. One or moe saith yea. He that speaketh for them all is called the foreman, and commonlie it is he that is first sworne: then the prisoner is bidden to holde vp his hande. The clarke saith vnto him, Thou art endicted by the name of A. of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, being asked holwe thou would be tryed, thou saydest by God and thy countrey. These honest men were giuen to thee by God & thy Prince for thy Countrey: Hearken what they say. Then he asketh of the enquest, what say you? Is he guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadly, the other acquiteth the prisoner. So that neither Judge nor Justice hath to doe, or can reuerse, alter or chaunge that matter, if they say guiltie. The clarke asketh what landes, tenementes, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonlie it is aunswere that they knowe not, nor it shall not greatly neede, for the Serife is diligent

diligent ynough to enquire of that, for the Princes and his owne aduantage, and so is the ercheatoz also.

Of him whom the iij. men pronounce guiltie, the Judge asketh what he can say for himselfe: if he can reade, he demandeth his Clergie. For in many felonies, as in theft of oren, sheepe, money, or other such thinges, which be no open robberies, by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the fauour of our Lawe, that for the first fault the felon shalbe admitted to his Clergie, for which purpose the Bishop must send one with authoritie vnder his seale to be Judge in that matter at euerie gaole deliuerie. If the condemned man demandeth to be admitted to his booke, the Judge commonly giueth him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can (God knoweth sometime verie slenderly :) then he asketh of the Bishops commissarie, *legit ut clericus?* The commissarie must say *legit* or *non legit*, for these be wordes sozmall, and our men of Lawe be verie precise in their wordes sozmall. If he say *legit*, the Judge proceedeth no further to sentence of death: if he say *non*, the Judge forthwith, or the next day proceedeth to sentence, which is done by worde of mouth onelie: Thou A. hast bene endicted of such a felonie and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe vpon God and thy Countrey, they haue found thee guiltie, thou hast nothing to say for thy selfe, the Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. When he sayth to the Sherife, Sherife doe execute: he that claimeth his Clergie, is burned forthwith in the presence of the Judges in the brawne of his hande with a hot yron marked with the letter T. for a theefe, or M. for a mansleer, in cases where Cler-

The deliuerie
to the Bishops
prison, and
the purgation
is taken away
by statute.

They must be
two at the
least that con-
spired.

gie is admitted, and is deliuered to the Bishops officer to be kept in the Bishops prison, from whence after a certaine time by an other enquest of Clarkes he is deliuered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guilty is acquitted forthwith and discharged of prison, paying the gaolers fees: and if hee knowe any priuate man who purchased his inditement, and is able to pursue it, he may haue an action of conspiracie against him, and a large amendes: but that case chaunceth seldome.

Certaine orders peculiar to England,
touching punishment of malefactors.

CHAP. 24.

For anie felonie, manslaughter, robbrie, murther, rape, and such capitall crimes as touch not treason & *lesam maiestatem*, we haue by the Lawe of Englande no other punishment, but to hang till they be dead: when they be dead, euerie man may burie them that will, as commonly they be. Heading, tormenting, demembzing, either arme or legge, breaking vpon the wheele, empaciling, & such cruell torments, as be vsed in other nations by the order of their law, we haue not: & yet as few murders committed as any where: nor it is not in the Judges or the Iustices power, to aggrauate or mitigate the punishment of the Lawe, but in the Prince onely and his priuie Counsell, which is maruellous seldome done. Yet notable murtherers many times by the Princes commaundement, after they bee hanged with corde till they bee dead, bee hanged with chaines while they rotte in the ayre. If the wife kill her husbando, shee shall bee burned aliue. If the

ser.

seruaunt kill his master, hee shall bee drawen on a
hurdle to the place of execution: it is called petit trea-
son. Impositioners, if the person die thereof, by a newe
lawe made in King Henrie the eight's time shalbe boy- *Quere.*
led to death: but this mischiefe is rare and almost vn-
knownen in England. Attempting to impositon a man,
or laying await to kill a man, though he wound him
daungerously, yet if death followe not, is no felonie
by the lawe of Englande, for the Prince hath lost no
man, and life ought to be giuen we say, but for life one-
ly. And againe, when a man is murdered, all be prin-
cipals and shall die, euen he that doth but hold the can-
del to giue light to the murderers. For mitigation and
moderation of paines, is but corruption of Iudges, as
we thinke. Likewise, to torment or question which is
vled by the order of the ciuill lawe and custome of o-
ther countries to put a malefactor to excessive paine,
to make him confesse of himselfe, or of his felowes or
complices, is not vled in England, it is taken for ser-
uile. For what can he serue the common wealth after
as a free man, who hath his bodie so haled and tormen-
ted, if he be not found guiltie, and what amends can be
made him? And if he must die, what crueltie is it so to
torment him before? Likewise, confession by torment
is esteemed for nothing, for if he confesse at the iudge-
ment, the tryall of the rii goeth not vpon him: If he
denie the fact, that which he saide before hindereth him
not. The nature of English men is to neglect death,
to abide no torment: And therefore he will confesse
rather to haue done any thing, yea, to haue killed his
own father, than to suffer torment, for death our natio
doth not so much esteem as a meane torment. In no place
shal you see malefactor's go more constantly, more assu-
redly, & with lesse lamentation to their death than in
England. Againe, the people not accustomed to see such
cruell torments, will pitie the person tormented, and
abhorre

abhoire the Prince and the Judges, who should bring in such crueltie amongst them, and the ris. men the rather absolue him. There is an olde lawe of Englands, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approver, that is to say an accuser or *Index* of his complices, the gaoler shall die therefore as a felon. And to say the trueth, to what purpose is it to vse torment? For whether the malefactor confesse or no, and whatsoeuer he saith, if the enquest of ris. do find him guiltie, he dyeth therefore without delay. And the malefactor, seeing there is no remedie, and that they be his countrymen, and such as he hath himselfe agreed vnto it, doe finde him woorthie death, yeeldes for the most part vnto it, and doeth not repine, but doth accomodate himselfe to aske mercie of God. The nature of our nation is free, stout, haulte, prodigall of life and blood: but contumelie, beatings, seruitude and seruile torment & punishment it will not abide. So in this nature and fashion, our auncient Princes and legislators haue nourished them, as to make them stout hearted, courageous and souldiers, not villaines and slaues, and that is the scope almost of all our policie. The ris. as sone as they haue giuen their verdict are dismissed to goe whither they will, and haue no maner commodie and profit of their labour and verdict, but onely doe seruice to the Prince and common wealth.

Of Treason, & the trial which is vsed
for the higher nobilitie and Barons.

CHAP. 25.

The same order touching triall by enquest of ris. men is taken in Treason, but the paine is more cruell. First to be hanged, taken downe aliue, his bowels taken

ken out and burned before his face, then to be beheaded, and quartered, and those set up in diuerse places. If anie Duke, Marques, or any other of the degree of a Baron, or above, Lord of the Parliament be apprehended of treason, or any other capitall crime, he is iudged by his peeres and equals: that is, the yeomanrie doth not go upon him, but an enquest of the Lordes of the Parliament, and they giue their voice, not one for all, but eche seuerally as they doe in Parliament, beginning at the yongest Lord. And for Iudge one Lord sitteth, who is Constable of England for that day. The iudgement once ginen, he breaketh his staffe and abdicateth his office. In the rest there is no difference from that above written.

Or rather
high steward
of England.

THE THIRDE Booke.

Of that which in other countries is called
appellation, or *prouocation*, to amend the iudgement
or sentence definitiue, which is thought
vniustly giuen in causes criminall.

CHAP. I.



If the enquest of rit men
do seme to the Iudges &
the Iustices to haue gone
too violently against the
evidence giuen in mat-
ters criminall, either it
is that vpon slender evi-
dence they haue pro-
nounced him giltie, who
the Iudges & most part

¶ 4

of

of the Iustices thinkes by the evidence not fullie p^{ro}ved guiltie, or for some other cause, doe thinke the person rather wo^rthie to live than to die. The enquest is neuerthelesse dimissed: but when the Judges should p^{ro}nounce the sentence of death vpon the person found guiltie, he will differ it, which is called to rep^{re}uiue the p^{ri}soner (that is to say to sende him againe to p^{ri}son) and so declare the matter to the P^{ri}nce, and obtaineth after a time for the p^{ri}soner his pardon: and as for p^{ro}uocation or appeale which is vsed so much in other countries, it hath no place in Englande, after sentence giuen by the i^uri, whereby the person is founde guiltie or not guiltie: but without that rep^{re}uiuing the sentence is streight put in execution by the Sherife. And if they either escape or die another death, the Sherife escapeth not to paie a great fine and ransom at the P^{ri}nces mercie: if hauing p^{re}gnant evidence neuerthelesse the i^uri doe acquite the malefactor, which they will doe sometime, and especially if they perceine either one of the Iustices, or of the Judges, or some other man to pursue too much and too malitiously the death of the p^{ri}soner, and do suspect some subornation of the witnesse, or them which doe giue evidence, and sometime if they perceine the Judge would haue the p^{ri}soner escape, and in repeating the evidence doe giue them thercof some watchwo^rde. But if they doe (as I haue saide), p^{ro}nounce not guiltie vpon the p^{ri}soner against whome manifest witnesse is brought in, the p^{ri}soner escapeth: but the i^uri not onely be rebuked by the Judges, but also threatned of punishment, and many times commaunded to appeare in the Starrechamber, or befoze the p^{ri}uie counsell for the matter. But this threatening chaunceth oftener than the execution thereof, and the i^uri answere with most gentle wo^rdes, they did it acco^rding to their consciences, and pray the Judges to be good vnto them, they did as they thought right, and as they

they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the Quene now) that an enquest for pronouncing one not guiltie of treason contrarie to such evidence as was brought in, were not onely imprisoned for a space, but an houghe fine set vpon their heads, which they were faine to pay: An other enquest for acquitting an other, beside paying a fine of money, put to open ignominie and shame. But those doinges were euen then of many accounted verie violent, tyzannical, and contrarie to the libertie and custome of the realme of Englande. Wherefore it commeth verie sel-dome in vse, yet so much at a time the enquest may be corrupted, that the Prince may haue cause with iustice to punish them: For they are men, and subiect to corruption and parcialitie, as others be.

[What remedie is, if the sentence be
thought vniustly giuen.

CHAP. 2.

In causes ciuill there is an other order: for if after the matter be pleaded to the issue, and the xij men thereupon impaneled, the evidence brought and pleaded before them on both the parties, the xij seeme to be parcial, and to haue giuen sentence contrarie to the evidence shewed vnto them: the partie grieved may bring against them, and the partie for whome the sentence is giuen, a writ of attaint: and where as before vpon the first quest commonly they all be yeomen, now vpon this attaint must goe xiiij gentlemen dwelling within the shire, and xij at the least of the hundredeth where the lande lyeth. The matter is pleaded againe before the same Judges. The partie defendant is not onely now he, who claimeth the lande, but also all

P

and

No more eu-
dence on the
behalf of the
plaintife, but
of the defen-
dant there
may.

The statute of
23. Henric 8.
doth not abo-
lish common
lawe, but gi-
ueth a more
profitable for
the plaintife.

and euerie of the yeomen, who by their verdict did giue it him. There must in the attaint no more euidence be brought in, but onely that which was brought in, and alledged befoze the first enquest. And if this seconde enquest of xiiiiij gentlemen doe adiudge as the first did, the plaintife shall not onely lose the lande, but also paie a fine to the Prince and damages to the partie. If this seconde enquest doe finde that the first enquest hath gone parcialle, and against the euidence brought in befoze them, the first enquest is called attainted, and accounted as periured and infamed. The Prince had befoze the waste of all their landes and possessions with other punishments, which at this present by a lawe made by parliament in the time of king Henric the eight is abolished, and nowe by that law or act of parliament, beside other punishment, each of the quest attainted payeth vnto the Prince and partie v. li. if it be vnder fourtie poundes: and if aboue, then xx. li. Attaints be verie seldome put in vze, partly because the gentlemen will not meete to slander and deface the honest yeomen their neighbours: so that of a long time, they had rather pay a meane fine than to appeare and make the enquest. And in the meane time they will intreate so much as in them lyeth the parties to come to some composition and agreement among themselves, as lightly they doe, except either the corruption of the enquest be too euident, or the one partie is too obstinate and headstrong. And if the gentlemen do appeare, gladlyer they will confirme the first sentence, for the causes which I haue saide, than go against it. But if the corruption be too much euident, they will not sicke to attaint the first enquest: yet after the gentlemen haue attainted the yeomen, if befoze the sentence be giuen by the Iudge (which ordinarily for a time is differred) the parties be agreed, or one of them be dead, the attaint ceaseth.

If

If at anie time befoze the sentence be giuen or put
in execution, there be founde some such errour in the
writ, in the proces, or forme (as our lawyers be verie
precise and curious of their formes) that it may be re-
uocable, it is brought afresh to the disputation by a
writ of error, and all that is done reuerfed. But that
is common to all other countries, where the ciuill lawe
is vsed, which they call *de nullitate processus*, and serueth
both in Englande and in other places aswell in causes
criminall, as ciuill. Other kinde of appellation to re-
uoke processe, and to make them of short, long, of
long, infinite, which is vsed by the ciuill lawe, we haue
not in our common lawe of Englande. By supplicati-
on to the Prince and complaint to the Chancelloz vpon
supposall of losse or lacke of euidence, or too much fa-
uour in the countrey, and power of the aduersarie,
there is in our countrey as well as theirs both stop-
ping and prolongation of Justice. For what will not
busie heades and louers of trouble neuer being satisfied
inuent in anie countrey to haue their desire, which is
to bere their neighbours, and to liue alwaies in disqui-
et? Men euen permitted of God like flies, and life, and
other bermine to disquiet them, who would imploie
themselves vpon better businesse and moze necessarie
for the common wealth: these men are hated, and
feared of their neighbours, loued and aided of them
which gaine by proces, and ware fatte by the expence
& trouble of other. But as these men ordinarily spende
their owne thurst, and make others against their wils
to spende theirs: so sometime being thoroughly knowen,
they do not onely liue by the losse like euill husbandes,
but beside rebuke & shame, by the equitie of the Prince
and courtes soueraigne, they come to be extraordina-
rily punished, both corporally, & by their purse, which
thing in my minde is as royall and princely an act, and
so beneficiall to the commonwealth, as in so small a

¶

matter

matter a King or a Quene can doe, for the repose and good education of their subiectes.

Of that which in England is called appeale, in other places accusation.

CHAP. 3.

In appeale
the battle is
tryed by the
parties onely,
and in writs of
right by
champions.

[If any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I haue choice to cause him to be endicted, by giuing information to the enquest of enquirie, (although he chaunce to escape the Constable or Iustices handes, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or else within a yeare and a day I may enter my appeale, that is mine accusation against him. If I began first to pursue him by information or denunciation to enditement, I am now no partie but the Prince, who for his due tie to God and his common wealth and subiectes, must see iustice executed against all malefactors & offenders against the peace, which is called Gods and his, and doth in such maner as I haue saide before. If I leaue that and will appeale, which is profer my accusation against him who hath done to me this iniurie, the defendand hath this aduantage to put himselfe to the Iurie, which is to that which before is saide to haue that issue and triall by God and his countrie, whereof the fashon I haue at large declared: or to demaunde the triall by battle, wherein both the parties must either themselves in person, or else finde other for them, who be called in our Lawe Champions or Champions, some doeth interpret them *aduersarij*, because they be men chosen, fat, lustie, fit to the seate, or as the French doe terme them *adroits aux armes*, which shall fight it out by *μονομαχία*, or as now they doe call it *duellum*, or the campe, which shall haue all things equall: but according as Mars giueth the victorie,

ric, so the Lawe is iudged the one as *peractus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more dangerous and equall, for the one or the other must die. So it is not in the grande assise, for the *reus* or defendant is onely in daunger of death. Shor't it is from day to sunne set, the quarell is ended, or sooner who hath the better fortune. This seemeth verie militarie (as in maner all our policie of Englande) and to haue as small to doe with Lawyers as with Whistons, quicklie to dispatche, and for the rest to returne, eche man to his buisnesse, to serue the common wealth in his vocation. The Popes of Rome, and men of the Church who of long time haue had dominion in our consciences, and would bring things to a more moderation, haue much detested this kinde of triall and iudgement, as reason is euerie man misliketh that which is not like to his education, and colde reasoning by Theologie and Philosophie: they I say much mislike many things done necessarily in whot policie. At the least a common wealth militarie must aduventure many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and in their studies: Howsoever it be, this kinde of triall of long time hath not bene used. So that at this time we may rather seeke the experience of it out of our histories of time passed, than of any biewe or sight thereof, of them which are nowe alic. Nevertheless the Lawe remaineth still, and is not abolished, and if it shall chaunce the murtherer or manslayer (the one we call him that lyeth in waite, and as they terme it in frenche *de guet appendaunt* killeth the man, the other who by casuall falling out and soudaine debate and choler doeth the same which way soeuer it be done) if he that hath slaine the man, hath

The battle or
Iurie is at the
election of
the defendant

his pardon of the prince, as occasion or the fauour of the Prince may so present, y he may haue it, yet the partie griued hath these two remedies, I say to require iustice by grand assise, or battle vpon his appeale & priuate reuenge, which is not denyed him. And if the defendant either by great assise or by battle be conuincd vpon that appeale, he shall die, notwithstanding the Princes pardon. So much fauourable our Princes be, and the Lawe of our Realme to iustice and to the punishment of blood violently shed.

Of the Court of Starre Chamber.

CHAP. 4.

There is yet in Englande an other court, of the which that I can vnderstand there is not the like in any other Countrie. In the Terme time (the Terme time as I haue heretofore shewed, I call the time and those daies when the Lawe is exercised in Westminster hall, which as I haue said is but at certaine times and termes) every weeke once at the least, (which is commonly on Fridaies, and Wednesdaies, and the next day after that the Terme doth ende,) the Lordes Chauncello, and the Lordes and other of the priue Counsell, so many as will, and other Lordes and Barons which be not of the priue Counsell, and be in the towne, and the Judges of England, specially the two chiefe Judges, from ix. of the clocke till it be xi. doe sit in a place which is called the starre chamber, either because it is full of windowes, or because at the first all the rofe thereof was decked with images of starres gilted. There is plaints heard of riots. Riot is called in our English terme or speache, where any number is assembled with force to doe any thing: and it had the beginning, because that our being much accustomed

stomed either in soeaine wars, in Fraunce, Scotland,
or Irelande, or being ouermuch exercised with ci-
uill warres within the Realme (which is the fault
that falleth ordinarily amongst bellicous nations)
whereby men of warre, Captaines and souldiers be-
come plentifull : which when they haue no externe ser-
uice wherewith to occupie their buisie heads and hands
accustomed to fight and quarell, must needs seeke qua-
rels and contentions amongst themselves, and be-
come so readie to oppresse right among their neigh-
bours, as they were wont before with praise of man-
hode, to be in resisting iniurie offered by their ene-
mies. So that our nation vsed hereunto, and vpon that
more insolent at home, and not easie to be gouerned by
Lawe and politike order, men of poluer beginning ma-
ny fraies, and the stronger by factions and parties of-
fering too much iniurie to the weaker, were occasions
of making good Lawes. First of reteiners, that no
man should haue aboue a number in his Liuerie or re-
tinue : then of the enquirie of routs and riots at euerie
Sessions, and of the lawe whereby it is prouided that
if any by force or by riot enter vpon any possessions,
the Iustices of the peace shal assemble themselves & re-
moue the force, & within certaine time enquire thereof.
And further, because such things are not commonlie
done by meane men, but such as be of power and force,
& be not to be dealt withal of euerie man, nor of meane
Gentlemen: if the riot be found & certified to the Kings
Counsell, or if otherwise it be complained of, the
partie is sent for, and he must appeare in this Starre
chamber, where seeing (except the presence of the
Prince onely) as it were the maiestie of the whole
Realme before him, being neuer so stout, he will be
abashed : and being called to aunswere (as he must
come of what degree soeuer he be) he shall be so charged
with such grauitie, with such reason & remonstrance,

Sent for by
Subpana.

and of those chiefe personages of Englande, one after an other handeling him on that sort, that what courage soever he hath, his heart will fall to the ground, and so much the moze, when if he make not his answer the better, as seldome he can so in open violence, he shalbe commaunded to the flete, where he shal be kept in prison in such sort as these Judges shall appoint him, lie there till he be wearie aswell of the restraint of his libertie, as of the great expences, which he must there sustaine, and for a time be forgotten, whiles after long suite of his friendes, he will be glad to be ordered by reason. Sometime as his deserts be, he payeth a great fine to the Prince, besides great costs and dammages to the partie, and yet the matter wherefoze he attempteth this riot and violence is remitted to the common Lawe. For that is the effect of this Court to byde such stout noble men, or Gentlemen which would offer wrong by force to any manner men, and cannot be content to demaund or defend the right by order of Lawe. This court began long befoze, but toke great augmentation and authoritie at that time that Cardinall Wolley Archebishop of Yorke was Chauncelloz of Englande, who of some was thought to haue first deuised y^e Court, because that he after some intermission by negligence of time, augmented the authoritie of it, which was at that time marvellous necessary to doe, to repressse the insolencie of the noble men and Gentlemen of the North partes of Englande, who being farre from the King and the seate of iustice made almost as it were an ordinarie warre among themselves, and made their force their Lawe, banding themselves with their tenants and seruants to doe or reuenge iniurie one against another as they listed. This thing seemed not supportable to the noble prince King Henrie the eight: and sending for them one after another to his Court to answer befoze

before the persons before named, after they had had remonstrance shewed them of their euill demeanour, and bene well disciplined as well by wordes as by flogging a while, and thereby their purse and courage somewhat asswaged, they began to range themselves in order, and to vnderstande that they had a Prince who would rule his subiectes by his lawes and obedience. Sith that time this court hath bene in more estimation, and is continued to this day in manner as I haue sayde before.

Of the Courts of Wards and Liueries.

CHAP. 5.

HE whom we call a warde in Englande, is called in Latine *pupillus*, and in Greeke *ἑκταρ*. The gardian is called in Latine *tutor*, in Greeke *ἐκταρ*. A warde or infant is taken for a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum* & *minor*, the one to xiiij. yere old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, so *minor* had *curatorem* till he came to the age of xxv. These tutores or curatores were accountable for the reuenues of the pupils minors lands, & great prouision and many lawes and orders is made for them in the booke of the ciuill Lawe, for rendering iust & true accounts. So that to be a gardian or tutor was accounted among them to be a charge or trouble, a thing subiect to much encumbrance and small profite, so that diuerse meanes were sought for, to excuse men from it. With vs this is cleane contrarie, for it is reckened a profite to haue a warde. For the Lord of whom the warde doeth holde the lande, so soone as by the death of the father the childe falleth warde vnto him, he leaseth vpon the body of the ward and his landes, of which (so that he doeth nourish the warde,) he taketh the profite without accounts,

Gardian in
cheualrie, and
gardian in
Socage.

Counts, and beside that offering to his warde couena-
ble mariage without dispergement befoze the age of
xxi. yeres if it be a man, of xiiij. if it be a woman. If
the warde refuse to take that mariage, he or she must
pay the value of the mariage, which is commonly ra-
ted according to the profite of his landes. All this
while I speake of that which is called in French garde
noble, that is of such as holde lands of other, by knight
seruice, for that is an other kinde of seruice which we
call in French gard retourier, we call it gard in socage,
that is of such as doe not holde by knight seruice, but by
tenure of the plough. This wardship falleth to him
who is next of the kinne, and cannot inherite the land
of the warde as the vncle by the mothers side, if the
land doe discend by the father, and of the fathers side, if
the lande discend by the mother. This gardian is ac-
countable for the reuenues and profites of the lande, as
the tutoz by the ciuill Lawe to the warde or pupill so
sone as he is of full age.

The man is not out of wardshippe by our lawe till
xxi. yere elde, from thence he is reckoned of full age, as
well as in the Romane lawes at xxv. The woman at
xiiij. is out of warde, for she may haue an husbände a-
ble to doe knightes seruice say our bookes. And be-
cause our wiues be in the power (as I shall tell you
hereafter) of their husbands, it is no reason, she should
be in two diuerse gards.

Many men doe esteeme this wardship by knightes
seruice verie vnreasonable and vniust, and contrarie
to nature, that a freeman and Gentleman should be
bought and solde like an horse or an ore, and so change
guardians as masters and lordes: at whose gouerne-
ment not onely his bodie but his landes and his houses
should be, to be wasted and spent without accountes,
and then to marie at the will of him, who is his natu-
rall Lord, or his will who hath bought him, to such as
he

he like not peradventure, or else to pay so great a ran-
some. This is the occasion they say, why many gen-
tlemen be so euill brought by touching vertue and lear-
ning, and but onely in deintinesse and pleasure: and
why they be married verie young and before they bee
wise, and many times do not greatly lone their wiues.
For when the father is dead, who hath the natural care
of his childe, not the mother, nor the uncle, nor the
next of kinne, who by all reason would haue most na-
turall care to the bringing up of the infant and *minor*,
but the Lorde of whom he holdeth his land in knights
seruice, be it the King or Duene, Duke, Marquess, or
any other, hath the gouernement of his bodie and ma-
riage, or else who that bought him at the first, seconde
or thirde hande. The Prince as having so many, must
needes giue or sell his wardes away to other, and so he
doeth. Other doe but seeke which way they may
make most aduantage of him, as of an ore or other
beast. These all (say they,) haue no naturall care
of the infant, but of their owne gaine, and especially
the buyer will not suffer his warde to take any great
paines, either in studie, or any other hardenesse, least
he should besicke and die, before he hath married his
daughter, sister or cousin, for whose sake hee bought
him: and then all his money which he paid for him
should be lost. So he, who had a father, which kept a
good house, and had all thinges in order to maintaine it,
shall come to his owne, after he is out of wardshippe,
woods decayed, houses fallen downe, stocke wasted and
gone, lande let forth and plowed to the baren, and to
make amends, shall pay yet one yeares rent for reliefe
and sue ouster le maind, beside other charges, so that
not of manie yeres and peradventure neuer he shall be
able to recouer, and come to the estate where his father
left it. This as it is thought was first graunted vpon
a great extremitie to King Henric the 3. for a time

D 2

vpon

But the Lorde
shall be puni-
shed for the
wast, by losse
of the ward: or
treble dam-
ages, if that
suffice not.

vpon the warre which he had with his Barons, and af-
 terwarde increased, and multiplied to moze and moze
 persons and grienances, and will be the decay of the
 nobilitie and libertie of Englande. Other againe say,
 the warde hath no wzong. For either his father pur-
 chased the lande, or it did discende vnto him from his
 auncesters with this charge. And because he holdeth
 by knightes seruice, which is in armes and defence,
 seeing that by age he cannot doe that whereto hee is
 bound by his lande, it is reason he aunswere that pro-
 fite to the Lorde, whereby he may haue as able a man
 to doe the seruice. The first knightes in Rome, those
 that were chosen *equites Romani*, had *equum publicum*
 on which they serued, and that was at the charge of
 widowes and wardes, as appeareth by Titus Linius,
 because that those persons could not doe bodilie ser-
 uice to the common wealth. Wherefoze this is no new
 thing, but thought reasonable in that most wise com-
 mon wealth, and to the prudent King Seruius Tullius.
 As for the education of our common wealth, it was at
 the first militaire, and almost in all thinges the scope
 and desaigne thereof is militaire. Yet was it thought
 most like, that noble men, good knightes, and great
 captaines would bring vp their wardes in their owne
 feates and vertues, and then mary them into like rase
 and stocke where they may finde and make friends,
 who can better looke to the education or better skill of
 the bringing vp of a gentleman, than he who for his
 higher nobilitie hath such a one to holde of him by
 knights seruice, or would doe it better than he that lo-
 keth or may claime such seruice of his ward, when age
 and yeres will make him able to doe it. That which
 is saide that this maner of wardship began in the time
 of King Henrie the 3. cannot seeme true. For in
 Normandie and other places of Fraunce the same
 order is.

An

And that statute made in King Henrie the thirds time touching wards, to him that will wey it wel, may seeme rather a qualification of that matter, and an argument that the fashion of wardship was long before: but of this matter an other time shall be more convenient to dispute. This may suffice to declare the manner of it.

Of Wiues and mariages.

CHAP. 6.

THE wiues in Englande be as I saide in *potestate maritorum*, not that the husbände hath *vita ac necis potestatem*, as the Romans had in the olde time of their children, for that is onely in the power of the Prince, and his lawes, as I haue saide before, but that whatsoeuer they haue before mariage, as soone as mariage is solemnished is their husbandes, I meane of money, plate, iuelles, cattail, and generally all moueables. For as for lande and heritage followeth the succession, and is ordered by the Lawe as I shall say hereafter: and whatsoeuer they gette after mariage, they get to their husbands. They neither can giue nor sell anie thing either of their husbandes, or their owne. Theirs no moueable thing is by the lawe of England *constanti matrimonio*, but as *peculium serui aut filij familias*: and yet in moueables at the death of her husbände she can claime nothing, but according as he shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executors if he die testate. Yet in London and other great Cities they haue that Lawe and custome, that when a man dieth, his goods be diuided into three partes. One thirde is imployed vpon the buriall and the bequestes which the testator maketh in his testament. An other thirde part the wife hath

hath as her right, and the thirde third part is the delwe and right of his childzen, equally to be divided among them. So that a man there can make testament but of one thirde of his goods: if he die intestate, the funerals deducted the goods be equally divided betwene the wife and the childzen.

By the common lawe of Englande if a man die intestate, the Ordinarie (which is the Bishoppe by common intendment) sometime the Archdeacon, Deane, or Prebendarie by privilege and prescription, doeth commit the administration of the goods to the widow or the child, or next kinsman of the dead, appointing out portions to such as naturally it belongeth unto, and the Ordinarie by common understanding hath such grantie and discretion as shalbe meete for so absolute an authoritie for the most part, following such division as is used in London, either by thirdes or halves. Our forefathers newelie converted to the Christian faith had such confidence in their pastors and instructors, and took them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such as would seeke no private profit to themselves thereby, that being once so ordeined hath still so continued. The abuse which hath followed was in part redressed by certaine actes of parliament made in the time of King Henrie the eight, touching the probate of testaments committing of administration & mortuaries. But to turne to the matter which we now have in hande, the wife is so much in the power of her husband, that not onely her goods by marriage are freight made her husbandes, and she loseth all her administration which she had of them: but also where all English men have name and surname, as the Romans had, Marcus Tullius, Caius Pompeius, Caius Julius, whereof the name is given to vs at the font, the surname is the name of the gentilitie and
 stocke

stocke which the sonne doeth take of the father alwaies, as the olde Romans did, our daughters so soone as they be married lose the surname of their father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted from their familie into another. So that if my wife was called before Philippe Wilford by her owne name and her fathers surname, so soone as she is married to me she is no more called Philippe Wilford, but Philippe Smith, and so must she write and signe: and as she chaungeth husbands, so she chaungeth surnames, called alwaies by the surname of her last husbnde. Yet if a woman once marrie a Lorde or a Knight, by which occasion she is called my Ladie with the surname of her husbnde, if he die and she take a husbnde of a meaner estate by whom she shall not be called Ladie (such is the honour we doe giue to women) she shall still be called Ladie with the surname of her first husbnde and not of the seconde.

Yet she is no
Ladie by the
common law,
although so
called of
courtesie.

I thinke among the olde Romans those marriages which were made *per coemptionem in manum*, and *per as* and *libram* made the wife *in manu & potestate viri*, where of also we had in our olde lawe and ceremonies of marriage, a certaine memorie as a viewe and *vestigium*. For the woman at the Church doze was giuen of the father or some other man next of her kinne into the handes of the husbnde, and he layde downe golde and siluer for her vpon the booke, as though he did buy her, the priest belike was in steede of Liprius: our marriages be esteemed perfect by the law of Englande, when they be solemnished in the Church or Chappell, in the presence of the priest and other witnesses. And this only maketh both the husbnde and the wife capable of all the benefites which our lawe doth giue vnto them and their lawefull children. In so much that if I marrie the widowe of one lately dead, which at the time

of her husbandes death was with childe, if the childe be bozne after mariage solemnished with me, this childe shalbe my heire, and is accounted my lawefull sonne, not his whose childe it is in deede, so precisely we doe take the letter where it is saide, *pater est quem nuptia demonstrant*. Those waies and meanes which Iustinian doeth declare to make bastardes to be lawefull children, muliers or rather melieurs (for such a terme our lawe vseth for them which be lawefull children) be of no effect in England, neither the Pope nor Emperour, nor the Prince himselve neuer could there legitimate a bastarde to enioy any benefite of our Lawe, the parliament hath onely that power.

Although the wife be (as I haue witten before) in *manu & potestate mariti*, by our Lawe yet they be not kept so streit as in new and with a gard as they be in Italy and Spaine, but haue almost as much libertie as in Fraunce, and they haue for the most part all the charge of the house and houtholde (as it may appeare by Aristotle and Plato the wiues of the Grekes had in their time) which is in deede the naturall occupation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force, and with all foren matters which is the naturall part and office of the man, as I haue witten before. And although our Lawe may seeme somewhat rigorous toward the wiues, yet for the most part they can handle their husbandes so well and so doulcely, and specially when their husbandes be sicke: that where the Lawe giueth them nothing, their husbandes at their death of their good will giue them all. And fewe there be that be not made at the death of their husbandes either sole or chiefe executrires of his last will and testament, and haue for the most part the gouernement of the children and their portions: except it be in London, where a peculiar order is taken by the citie much after the fashion

Union of the ciuill lawe.

All this while I haue spoken onely of moueable goods: if the wife be an enheretrix & bring lande with her to the mariage, that lande descendeth to her eldest sonne, or is diuided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage or purchaseth afterwarde, the husbände can not sell nor alienate the same, no not with her consent, nor she her selfe during the mariage, except that she be sole examined by a Iudge at the common lawe: and if he haue no childe by her and she die, the lande goeth to her next heires at the common lawe: but if in the mariage hee haue a childe by her, which is heard once to crie, whether the childe liue or die, the husbände shall haue the vsufruite of her landes, (that is the profite of them during his life) and that is called the cour-
tise of Englande.

It is auoidable after the husbändes death, except it be for xxi. yeares or three liues according to the statute, or except they le- uie a fine.

Likewise if the husbände haue any lande either by inheritance descended or purchased and bought, if hee die before the wife, she shall haue the vsufruite of one thirde part of his landes. That is, she shall holde the one thirde part of his landes during her life as her dowrie, whether he hath childe by her or no. If he hath any children, the rest descendeth straight to the eldest: if he hath none, to the next heire at the common lawe: and if she mislike the diuision, she shall aske to be indow- ed of the fairest of his landes to the thirde part.

This which I haue written touching mariage and the right in moueables and immoueables which com- meth thereby, is to be vnderstode by the common lawe when no priuate contract is more particularly made. If there be any priuate pacts, couenants, and contracts made before the mariage betwixt the husbände and the wife, by theselues, by their parents, or their friends, those haue force and be kept according to the firmitie and strength in which they are made. And this is y-
p nough

nough of wiues and mariage.

Of Children.

CHAP. 7.

Our children be not *in potestate parentum*, as the children of the Romans were: but as soon as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *partes parentum*. That which is theirs they may give or sell, and purchase to themselves either lands and other moveables the father having nothing to do therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sui heredes* complaints, *de inofficioso testamento* or *preteritorum liberorum non emancipatorum* haue no effect nor vse in our lawe, nor we haue no manner to make lawefull children but by mariage, and therefore we knowe not what is *adoptio* nor *arrogatio*. The testator disposeth in his last will his moveable goods freely as he thinketh meete and convenient without controulement of wife or children. And our testaments for goods moveable bee not subiect to the ceremonies of the ciuill lawe, but made with all libertie and freedom, and *iure militari*. Of landes as ye haue vnderstande before, there is difference: for when the owner dieth, his lande descendeth onely to his eldest sonne, all the rest both sonnes and daughters haue nothing by the common lawe, but must serue their eldest brother if they will, or make what other shift they can to liue: except that the father in life time doe make some conueiance and estates of part of his land, to their vse, or else by deuise, which word amongst our lawiers doth betoken a testament written, sealed and deliuered in the life time of the testator before witnesse: for without those ceremonies a bequest of landes is not available.

available. But by the common lawe if he that dieth hath no sonnes but daughters, the lande is equally divided among them, which portion is made by agreement or by lotte. Although (as I haue sayde) ordinarily and by the common lawe, the eldest sonne inheriteth all the landes, yet in some countreyes all the sonnes haue equall portion, and that is called gavelkinde, and is in many places in Kent. In some places the yongest is sole heire: and in some places after an other fashion. But these being but particular customes of certayne places and out of the rule of the common law, doe litle appertain to the disputation of the policie of the whole Realme, and may be infinite. The common wealth is iudged by that which is most ordinarily and commonly done throught the whole Realme.

Of Bondage and Bondmen.

CHAP. 8.

After that we haue spoken of all the sortes of freemen according to the diuersitie of their estates and persons, it resteth to say somewhat of bondmen which were called *serui*, which kinde of people & the disposition of them and about them doeth occupie the most part of Iustinians Digestes, and Code. The Romans had two kindes of bondmen, the one which were called *serui*, and they were either which were bought for money, taken in warre, left by succession, or purchased by other kinde and lawefull acquisition, or else borne of their bonde women and called *verna*: all those kinde of bondmen be called in our lawe villens in grosse, as ye would say immediatly bonde to the person and his heires. An other they had (as appeareth in Iustinians time), which they called *adscriptici glebe* or *agri censiti*. These were not bond to the person, but to the manno

or place, and did folloꝝe him who had the manors, and in our lawe are called villaines regardantes, for be-
 cause they be as members, or belonging to the manor
 or place. Neither of the one sort nor of the other haue
 we any number in Englande. And of the first I neuer
 knewe any in the realme in my time: of the seconde so
 fewe there be, that it is not almost woꝝth the spea-
 king. But our lawe doth acknowledge them in both
 those sortes. Manumission of all kinde of villaines or
 bondmen in Englande is vsed and done after diuerse
 sortes, and by other and moze light and easie meanes
 than is prescribed in the ciuill lawe, and being once
 manumitted, he is not *libertus manumittentis*, but sim-
 ply *liber*: howbeit sith our Realme hath receiued the
 Christian religion which maketh vs all in Christ bꝛe-
 thꝛen, and in respect of God and Christ *conseruos*, men
 began to haue conscience to holde in captiuitie and such
 extreme bondage him whome they must acknowledge
 to be his brother, and as we vse to terme him Christi-
 an, that is who looketh in Christ and by Christ to haue
 equall portion with them in the Gospell and saluation.
 Upon this scruple, in continuance of time, and by long
 succession, the holie fathers, Punks and Friers in
 their confession, and specially in their extreme & dead-
 ly sicknesses, burdened the consciences of them whome
 they had vnder their bandes: so that temporall men by
 little and little by reason of that terroꝝ in their consci-
 ence, were glad to manumit all their villaines: but the
 said holie fathers, with the Abbots and Priors, did not
 in like sort by theirs, for they had also conscience to
 impouerish and dispoyle the Churches so much as to
 manumit such as were bond to their Churches, or to
 the manors which the Church had gotten, and so kept
 theirs still. The same did the Bishoppes also till at the
 last and nowe of late some Bishoppes to make a pꝛece of
 money manumitted theirs partly for argent, partly for
 Naun-

slaunders, that they seemed more cruel than the temporallie: after the monasteries comming into temporall mens handes haue bene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not used with vs so cruelly nor in that sort as the bondmen at the Romane ciuill law, as appeareth by their Comedies, nor as in Greece as appeareth by theirs: but they were suffered to enioie coppieholde lande to gaine and get as other serues that now and then their Lordes might fleese them and take a peece of money of them, as in France the Lordes doe faile them, whom they call their subiectes at their pleasure, and cause them to pay such summes of money as they list to put vpon them. I thinke both in France and England the chaunge of religion to a more gentle, humane and more equall sort (as the Christian religion is in respect of the Gentiles) caused this olde kinde of seruite seruitude and slaerie to be brought in to that moderation, for necessitie first to villaines regardants, and after to seruitude of landes and tenures, and by litle and litle finding out more ciuill and gentle meanes and more equall to haue that done which in time of heathenesse seruitude or bondage did, they almost extinguished the whole. For although all persons christians be brethren by baptisme in Iesu Christ, and therefore may appeare equally free: yet some were and still might be christianed being bond and serue, and whom as the baptisme did finde so it did leaue them, for it chaungeth not ciuill lawes nor compactes amongst men which be not contrarie to Gods lawes, but rather maintaineth them by obedience. Which seeing men of god conscience hauing that scruple whereof I wrote before, haue by litle and litle found meanes to haue and obtaine the profit of seruitude and bondage which gentilitie did vse and is vused to this day amongst Christians on the one part, and Turkes and Gentils on the other

other part, whē warre is betwixt them vpon those whō they take in battaile. Turkes and Gentiles I call them, which vsing not our Lawe the one beleueth in one God, the other in many gods, of whom they make Images. For the Lawe of Iewes is well ynough knowen, & at this day so farre as I can learne, amongst all people Iewes be holden as it were in a common seruitude, and haue no rule nor dominion as their owne prophetes doe tell that they should not haue, after that Christ promised to them, was of them refused: for when they would not acknowledge him, obstinately forsaking their helpe in soule for the life to come and honour in this world for the time present, not taking the good tidings, newes, and Euangell brought to them by the great grace of God, and by the promise of the Prophetes fructified in vs which be Gentils & brought forth this humanitie, gentlenesse, honour and godlie knowledge which is sene at this present. But to returne to the purpose.

This perswasion I say of Christians not to make nor keepe his brother in Christ, seruite, bonde and vnderling for euer vnto him, as a beast rather than as a man, and the humanitie which the Christian religion doeth teach, hath engendred through Realmes (not nere to Turkes and Barbarians), a doubt, a conscience and scruple to haue seruants and bondmen: yet necessitie on both sides, of the one to haue helpe, on the other to haue seruite, hath kept a figure or fashio thereof. So that some would not haue bondmen, but *adscripticij glebae*, & villaines regardant to the ground, to the intent their seruite might be furnished, and that the countrie being euill, vnwholsome, and otherwise barren, should not be desolate. Others afterwarde found out the waies and meanes, that not the men but the land should be bound and bring with it such bondage and seruite to him that occupieth it, as to ca-
rie

rie the Lordes dung vnto the fieldes, to pleugh his ground at certaine daies, sowe, reape, come to his Court, sweare faith vnto him, and in the ende to holde the lande but by copie of the Lords court rolle, and at the will of the Lord. This tenure is called also in our lawe, villaine, bonde, or seruite tenure: yet to consider moze deeply all lande, euen that which is called most free lande, hath a bondage annexed vnto it, not as naturally the lower ground must suffer and receiue the water and filth which falleth from the higher ground, nor such as Iustinian speaketh of *de seruitudinibus prediorum rusticorum & urbanorum*, but the lande doeth bying a certaine kinde of seruitude to the possessor. For no man holdeth land simply free in Englande, but he or she that holdeth the Crowne of Englande: all others holde their land in fee, that is vpon a faith or trust, and some seruice to be done to another Lord of a Mannor as his superiour, and he againe of an higher Lord, till it come to the Prince & him that holdeth the Crowne. So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is vnderstande to be holden of the Crowne, and in capite, which is much like to knights seruice, and draweth vnto it three seruices, homage, ward and marriage: That is, he shall sweare to be his man, and to be true vnto him of whom he holdeth the lande. His sonne who holdeth the land after the death of his father, shall be married where it pleaseth the Lord. He that holdeth the lande most freely of a tempozall man (for franke almose and franke marriage hath an other cause and nature) holdeth by fealtie onely, which is, he shall sweare to be true to the Lord, and doe such seruice as appertaineth for the land which he holdeth of the Lord. So that all free lande in Englande is holden in fee or feodo, which is asmuch to say as in *fide* or *fiducia*: That is, in trust and confidence, that he shall be true to the

Littleton did
not interpret
the word *feoff*
simplex, but ra-
ther define or
describe the
nature thereof.

Littleton seene
in the tongues
as Sir Tho-
mas Smith
was in Little-
ton.

Lozde of whom he holdeth it, pay such rents, doe such
seruice, and obserue such conditions as was annexed
to the first donation. Thus all sauing the Prince be
not *in rem domini*, but rather *fiduciarij domini*, & *possessores*:
This is a moze likely interpretation than that which
Littleton doeth put in his booke, who saith that *feodum*
idem est quod hereditas, which it doeth betoken in no
language. This hapneth many times to them who be
of great witte and learning, yet not seene in many
tongues, or marketh not the deduction of wordes
which time doth alter. *Fides* in Latine the Gothes com-
ming into Italie, and corrupting the language, was
turned first into *fede*, and at this day in Italie they wil
say in *fide*, en *fede* or *ala fe*. And some vncunning Law-
yers that would make a newe barbarous latine worde
to betoken lands giuen in *fidem*, or as the Italian saith
in *fede*, or *fe*, made it in *feudum* or *feodum*. The nature
of the worde appeareth moze eident in those which
we call to *fe*, *feoff* or *feoffees*, the one be *fiduciarij posses-
sores*, or *fidei commissarij*, the other is, *dare in fiduciam*, or
fidei commissum, or moze latinely, *fidei committere*. The
same Littleton was as much deceiued in *withernam*, &
diuerse other olde wordes. This *withernam* he inter-
preteth *vetitum naminum*, in what language I knowe
not: whereas in trueth it is in plaine Dutche and in
our olde Saxon language, wyther *nempt*, *alterum ac-
cipere*, *iterum rapere*, a worde that betokeneth that
which in barbarous Latine is called *represalia*, when
one taking of me a distresse, which in Latine is called
pignus, or any other thing, and carying it away out of
the iurisdiction wherein I dwell, I take by order of
him that hath iurisdiction, another of him againe or of
some other of that iurisdiction, and doe bring it into
the iurisdiction wherein I dwell, that by equall wrong
I may come to haue equall right. The manner of
represalia, and that we call *withernam*, is not altoge-
ther

ther one: But the nature of them both is as I haue described, and the proper signification of the words doe not much differ. But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at full libertie and *maxime ingenui*, yet by annexing a condition to the lande, there is meanes to bring the owners and possessors thereof into a certaine seruitude or rather libertinitie: That the tenants beside paying the rent accustomed, shal owe to the Lord a certaine faith, duetie, trust, obedience, and (as we terme it) certaine seruice as *libertus*, or *cliens patrono*: which because it doeth not consist in the persons, for the respect in them doeth not make them bonde, but in the lande and occupation thereof, it is more properly expressed in calling the one tenant, the other Lord of the fee, than either *libertus* or *cliens* can doe the one, or *patronus* the other: for these wordes touch rather the persons, and the office and duetie betwene them, than the possessions. But in our case leauing the possession and lande, all the obligation of seruitude and seruice is gone.

An other kinde of seruitude or bandage is vsed in Englande for the necessitie thereof, which is called apprenticehoode. But this is onely by couenant, and for a time, and during the time it is *vera seruitus*. For whatsoever the apprentice getteth of his owne labour, or of his masters occupation or stocke, hee getteth to him whose apprentice he is, he must not lie forth of his masters doores, he must not occupie anie stocke of his owne, nor mary without his masters licence, and he must doe all seruile offices about the house, and be obedient to all his masters commaundementes, and shall suffer such correction as his master shall thinke meete, and is at his masters cloathing and nourishing, his master being bounde onely to this which I haue saide, and to teache him his occupation, and for that he

¶

ser

seruet^h, some for vij. or viij. yeres, some ix. or x. yeres, as the masters and the friends of the young man shall thinke meete or can agree: altogether (as Polidore hath noted) *quasi pro emptio seruo*: neuertheless that neither was the cause of the name apprentice, neither yet doth the worde betoken that which Polydore supposeth, but it is a frenche worde, and betokeneth a learner or scholer. Apprendre in frenche is to learne, and apprentise is as much to say in frenche (of which tongue we borrowed this worde and many more other) as *discipulus* in Latine: likewise he to whome he is bound, is not called his Lorde but his master, as ye would say his teacher. And the pactions agreed vpon, be put in wyting, signed and sealed by the parties, and registred for more assurance: without being such an apprentice in London, and seruing out such a seruitude in the same Citie for the number of yeres agreed vpon, by order of the Citie amongst them, no man being neuer so much bozne in London, and of parentes londoners is admitted to be a Citizen or free man of London: the like is vsed in other great Cities of Englande. Besides apprentises, others be hired for wages, and be called seruautes or seruing men and women throughout the whole Realme, which be not in such bondage as apprentises, but serue for the time for daily ministrie, as *serui* and *ancilla* did in the time of gentilitie, and be for other matters in libertie as full free men and women.

But all seruautes, labourers and others not married, must serue by the yere: and if he be in couenaunt, he may not depart out of his seruice without his masters licence, and he must give his master warning that he will depart one quarter of a yere before the terme of the yere expireth, or else he shalbe compelled to serue out an other yere. And if any young man unmarried be without seruice, he shalbe compelled to get him a master

The sonnes of freemen of London are also free by birth, according to the custome.

fter whom he must serue for that yere, or else he shalbe punished with stockes and whipping as an idle vagabond. And if any man married or unmarried, not hauing rent or liuing sufficient to maintaine himselfe, doe liue so idely, he is enquired of, and sometime sent to the gaole, sometime other wise punished as a sturdie vagabond: so much our policie doth abhorre idlenesse. This is one of the chiefe charges of the Iustices of peace in euerie Shire. It is taken for vngentlenesse and dishonour, and a shewe of enmitie, if any gentleman doe take an other gentlemans seruaunt (although his master hath put him away) without some certificate from his master either by worde or writing, that he hath discharged him of his seruice. That which is spoken of men seruautes, the same is also spoken of women seruautes. So that all youth that hath not sufficient reuenues to maintaine it selfe, must needes with vs serue, and that after an order as I haue written. Thus necessitie and want of bondmen hath made men to vse freemen as bondmen to all seruite seruices: but yet more liberally and freely, and with a more equalitie and moderation, than in time of gentilitie slaues and bondemen were wont to be used, as I haue saide before. This first and latter fashion of temporall seruitude, and vpon paction is used in such countreyes, as haue left off the olde accustomed maner of seruautes, slaues, bondmen and bondwomen, which was in vse before they had receiued the Christian faith. Some after one sort, and some either more or lesse rigorously, according as the nature of the people is enclined, or hath deuised amongest themselves for the necessitie of seruice.

Q²

Of

Of the Court which is Spirituall or Ecclesiasticall, and in the booke of Law, Court Christian, or *Curia Christianitatis*.

CHAP. 9.

THE Archbishops and Bishops haue a certaine peculiar iurisdiction vnto them especially in foure manner of causes: Testaments and legations, Wythes and mortuaries, marriage and adulterie or fornication, and also of such thinges as appertaine to orders amongest themselves and matters concerning religion. For as it doeth appeare, our auncestors hauing the common wealth befoze ordeined & set in frame, when they did agree to receiue the true and Christian religion, that which was establisshed befoze, and concerned externe policie (which their Apostles, Doctors and Preachers did allowe) they helde and kept still with that which they brought in of newe. And those thinges in keeping whereof they made conscience, they committed to them to be ordered and gouerned as such thinges, as of which they had no skill, as to men in whom for the holinesse of their life and good conscience, they had a great and sure confidence. So these matters be ordered in their Courts, and after the fashon and manner of the lawe ciuill or rather common by citation, libel, *contestacionem litis*, examination of witnesses *per iuramentum*, by exceptions, replications apart and in writing, allegations, matters by sentences given in writing, by appellations from one to an other as well *grauamine* as *sententia definitina*, and so they haue other names, as Proctors, Advocates, Assessors, Ordinaries, and Commissaries, &c. farre from the manner of our order in the common lawe of Englande, and from that fashon which I haue shewed you befoze. Wherefore

foze if I say the testament is false and forged, I must sue in the spirituall lawe, so also if I demaunde a legacie: but if I sue the executor or administrator which is he in our lawe, who is in the ciuill lawe *heres or bonoris mobilium possessor ab intestato*) for a debt which the dead ought me, I must sue in the temporall court. These two courtes the temporall and the spirituall be so diuided, that whosoener sueth for any thing to Rome or in any spirituall court for that cause or action which may be pleaded in the temporall court of the Realme, by an olde lawe of Englande he falleth into a *premunire*, that is hee forfeiteth all his goods to the Prince, and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the scribe, the procurer and assessor which receiueth and doth maintaine that vsurped pleading doeth incur the same daunger. Whether the word *premunire* doeth betoken that the authoritie & iurisdiction of the realme is prouided for befoze, and defended by that lawe, and therefore it hath that name *premunire* or *premuniri*, or because that by that lawe such an attempture hath had warning giuen befoze to him of the daunger into which he falleth by such attempt, and then *premunire* is barbarously witten for *pramonere*, *pramoneri*, (as some men haue helde opinion) I will not define, the effect is as I haue declared: and the lawe was first made in King Richard the secondes time, and is the remedie which is vsed when the spirituall iurisdiction will goe about to encroch any thing vpon the temporall courts. Because this court or forme which is called *curia christianitatis*, is yet taken as appeareth for an externe and forren court, and differeth from the policie and manner of gouernement of the Realme, and is an other court (as appeareth by the act and writ of *premunire*) than *curia regis aut regine*: Yet at this present this court as well as others hath her force, power, authoritie,

Which ought to be tried in the temporall court.

rule and iurisdiction, from the royall maiestie and the crowne of Englande & from no other forren potentate or power vnder God, which being granted (as indeede it is true) it may now appeare by some reason that the first statute of *præmunire* whereof I haue spoken, hath now no place in Englande, seeing there is no pleading *alibi quam in curia regis ac regina*.

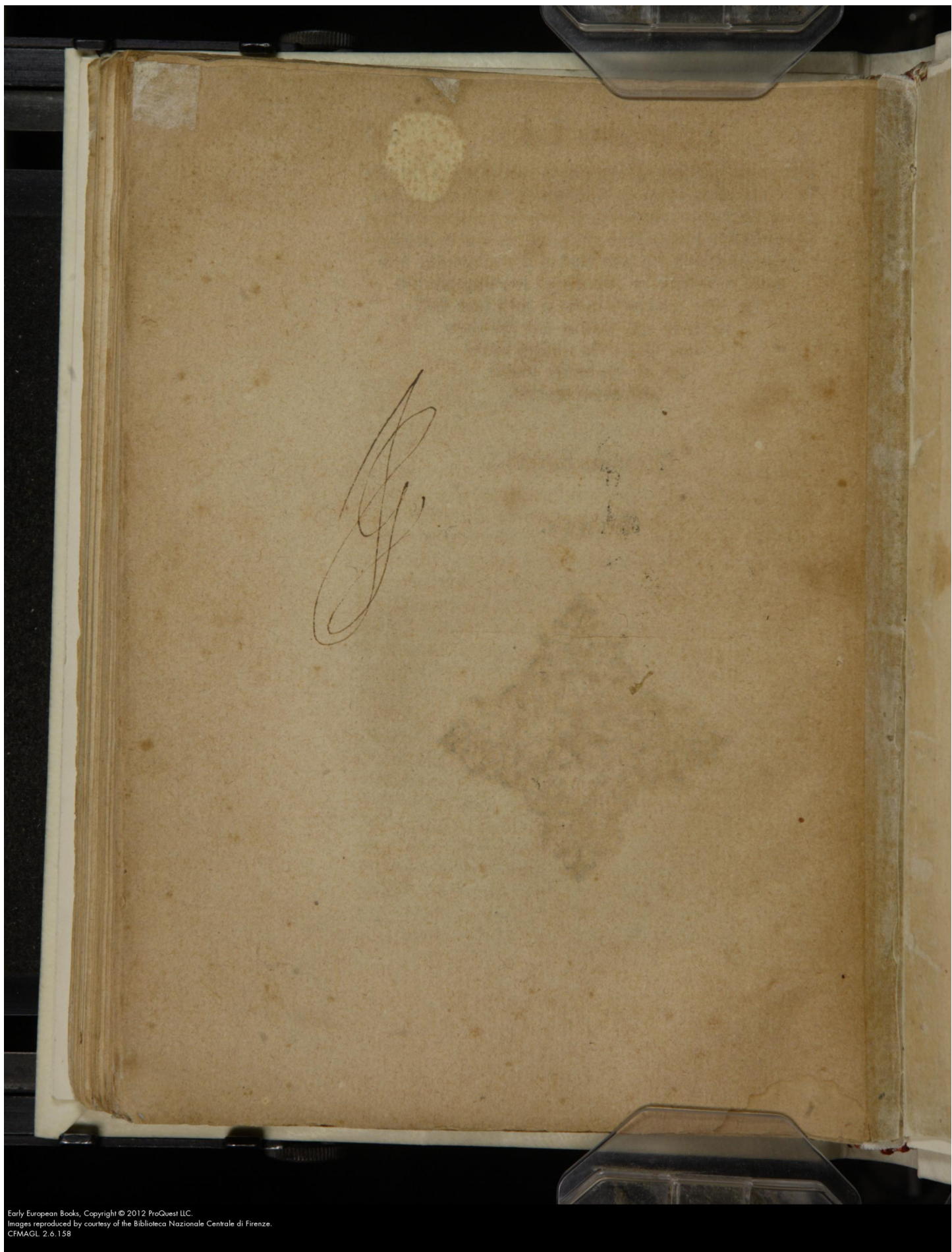
I haue declared summarily as it were in a chart or mappe, or as Aristotle termeth it *ut in rebus* the forme and manner of the gouernement of Englande, and the policie thereof, and sette before your eyes the principall pointes wherein it doeth differ from the policie or gouernement at this time vsed in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the ciuill Lawe of the Romanes compiled by Iustinian into his pandects and code: not in that sort as Plato made his common wealth, or Xenophon his kingdome of Persia, nor as Syr Thomas More his *Utopia* being feigned common wealths, such as neuer was nor neuer shall be, vaine imaginations, phantasies of Philosophers to occupie the time and to exercise their wittes: but so as Englande standeth and is gouerned at this day the xxviii of March Anno 1565. in the vij yeare of the raigne and administration thereof by the most vertuous and noble Quene Elizabeth, daughter to King Henrie the eight, and in the one & fiftieth yeere of mine age, when I was ambassadoe for her maiestie in the court of Fraunce, the scepter whereof at that time the noble Prince and of great hope Charles Maximilian did holde, hauing then reigned iiii yeares. So that whether I writ true or not, it is easie to be seene with eyes (as a man would say) and felt with handes. Wherefore this being as a proiect or table of a common wealth truly laide before you, not fained by putting a case: let vs compare it with common wealthes, which be at this day in esse, or doe remaine described in true histories,

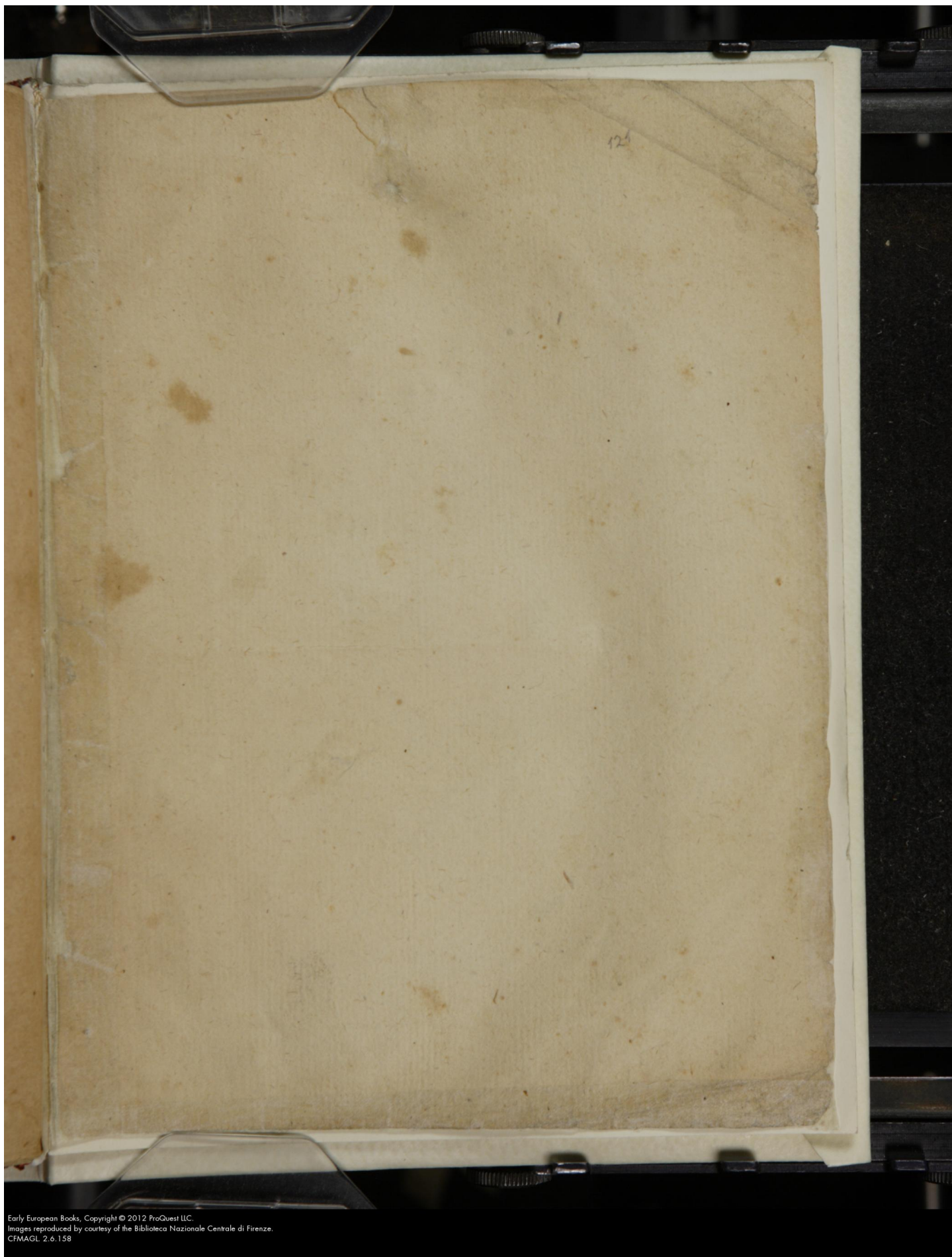
hystories, especially in such points wherein the one dif-
fereth from the other, to see who hath taken the righter,
truer, and moze commodious way to gouerne the peo-
ple aswell in warre as in peace. This will be no illibe-
rall occupation for him that is a Philosopher and
hath a delight in disputing, nor vnprofitable
for him who hath to doe & hath good will
to serue the Prince and the com-
mon wealth in giuing coun-
sell for the better admi-
nistration thereof.

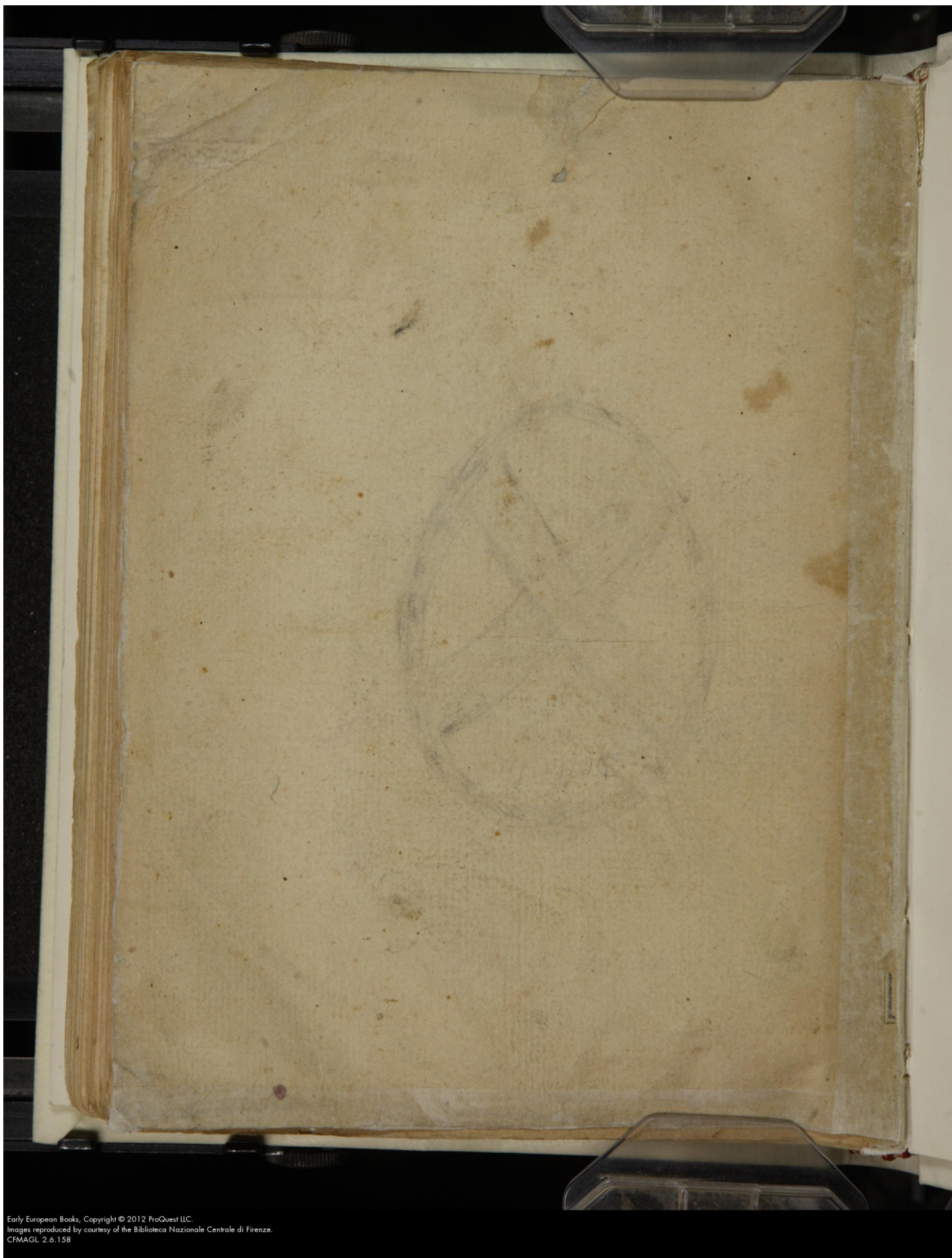
Thomas Smyth.

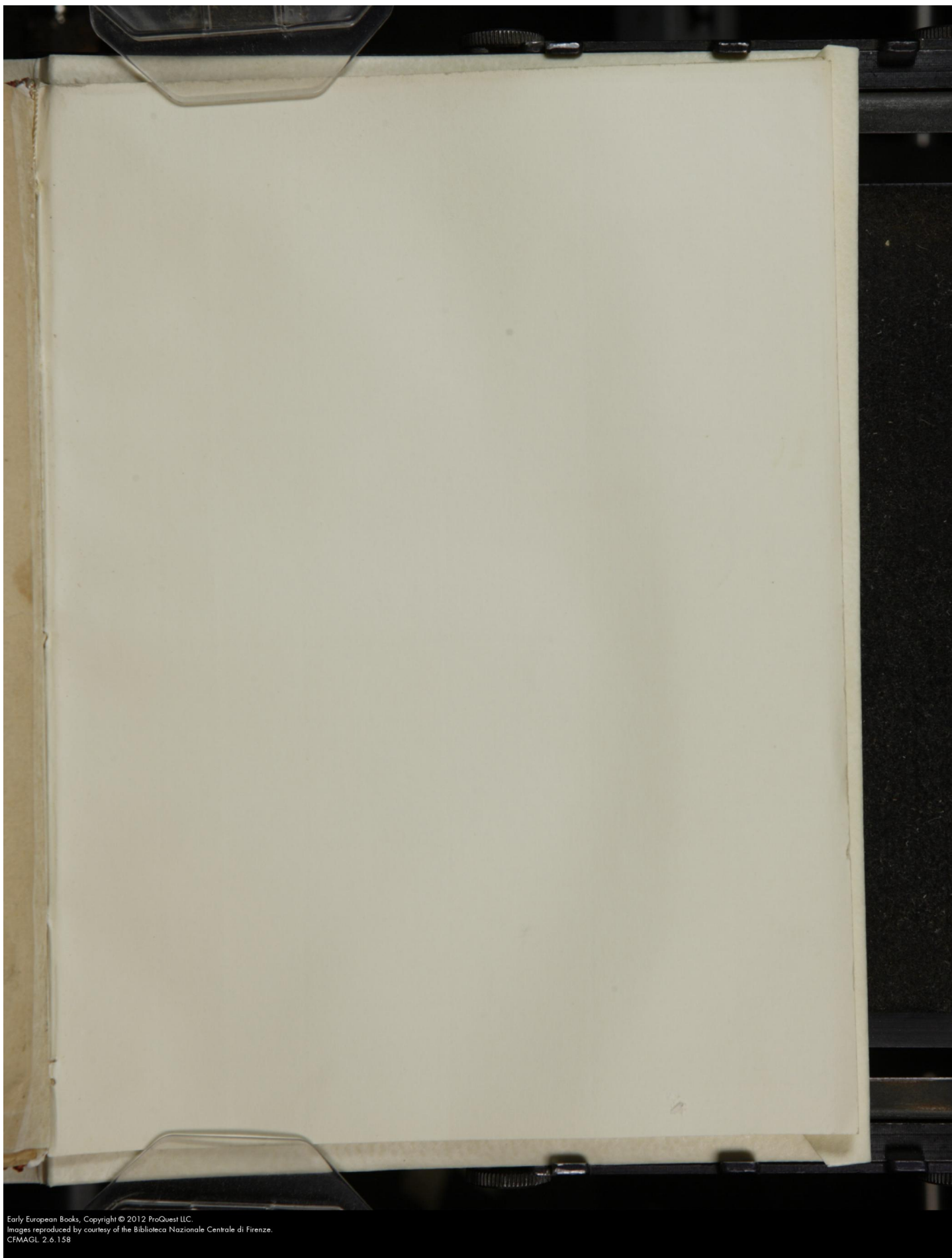
FINIS.

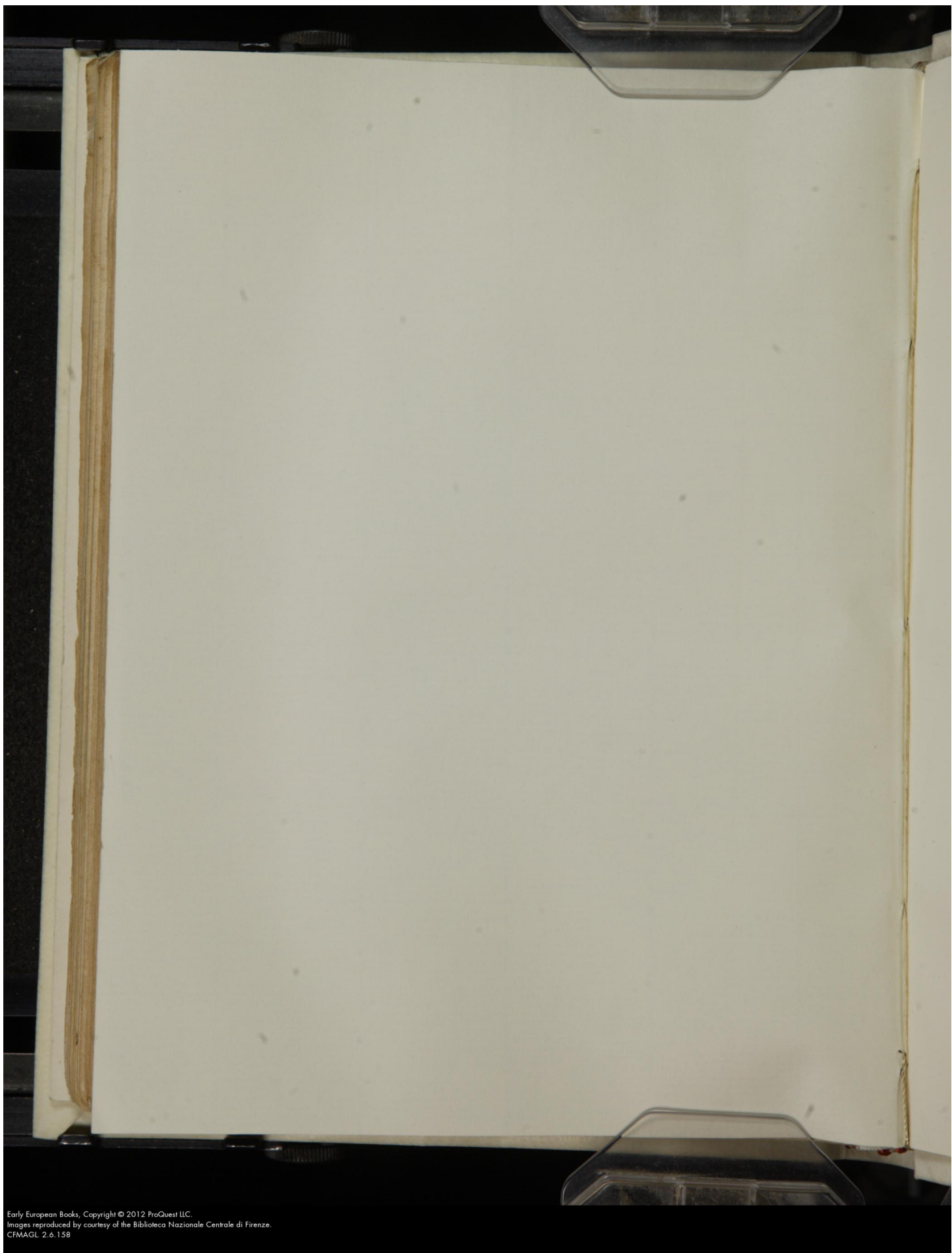


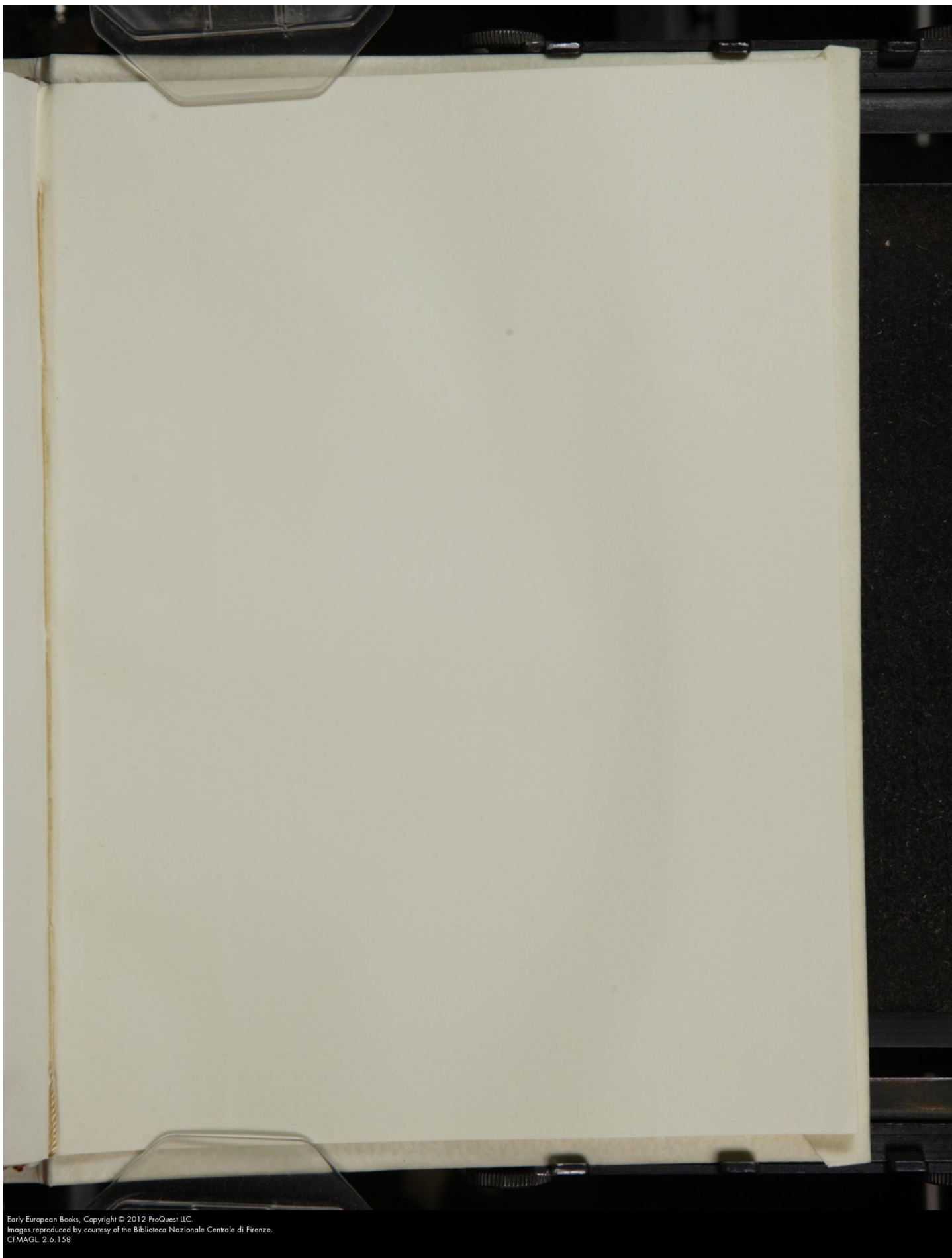


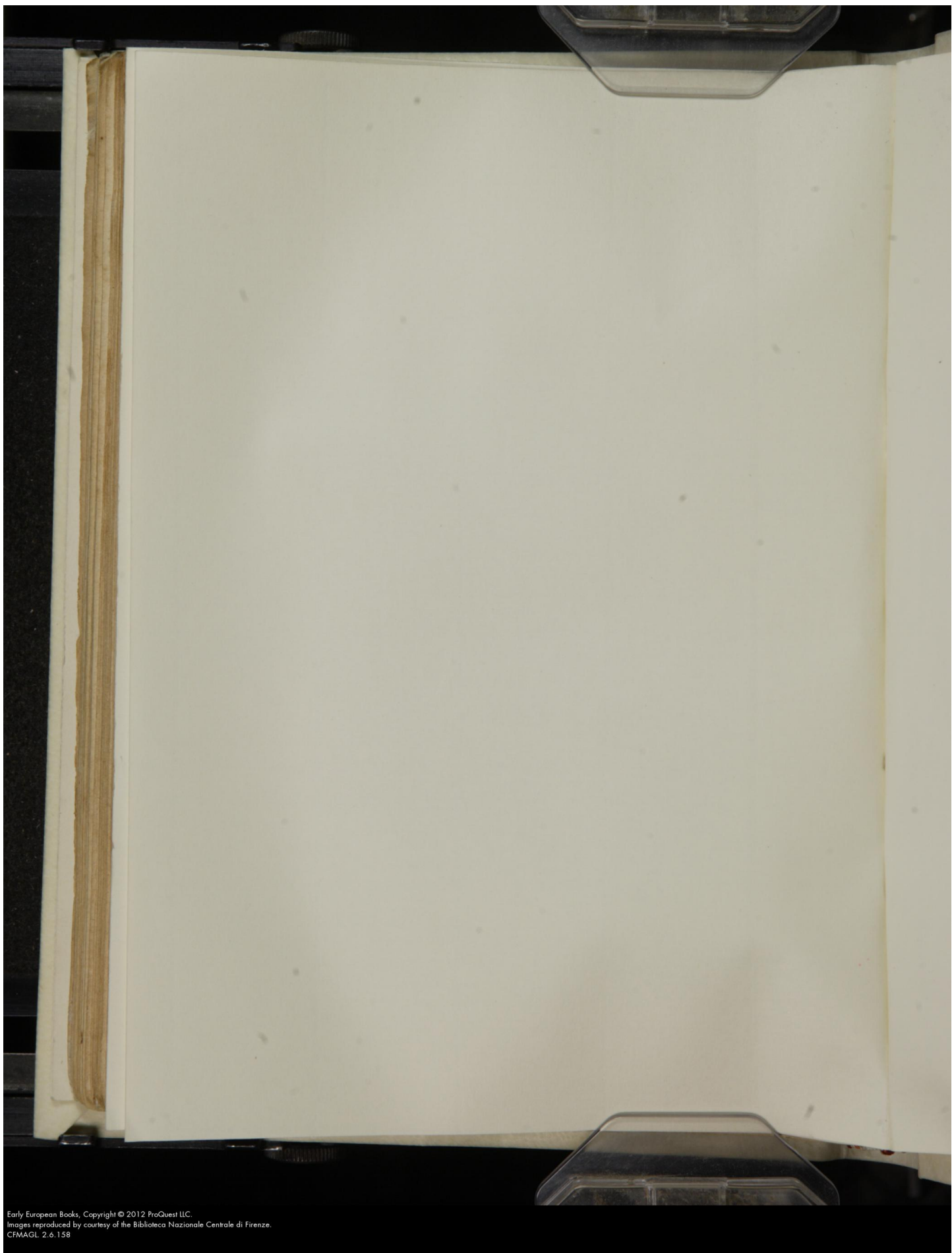


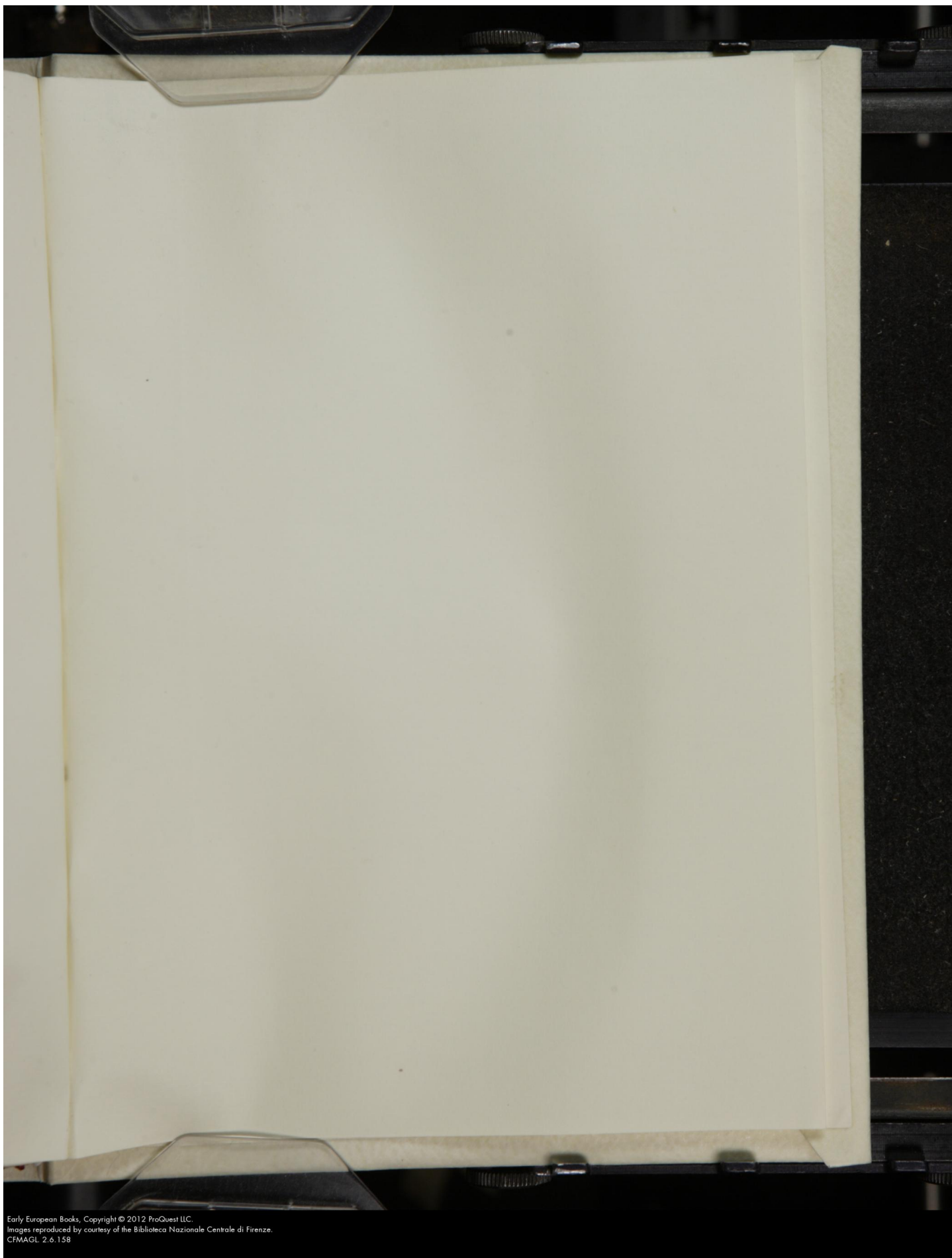












00564698 5

